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12 David D. McDonald, Donna K. McDonald,
13 National Expert Witness Network and Technology
14 CLE

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 CV 08

ORIGINAL
FILED
JAN 24 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JL

18 JENNIFER OSBELT,

19 Plaintiff(s);

20 v.

21 DAVID D. McDONALD, DONNA K.
22 McDONALD, and DOES 1-10, inclusive,

23 Defendant(s).

State Court Case No.: CIV 463528

**DEFENDANTS' NOTICE OF REMOVAL
PURSUANT TO 28 U.S.C. § 1331, 1441 and
1446**

(DEMAND FOR JURY TRIAL)

24 DAVID D. McDONALD; DONNA K.
25 McDONALD; NATIONAL EXPERT
26 WITNESS NETWORK, a California Limited
27 Liability Company; TECHNOLOGY CLE, a
28 California Limited Liability Company,

Cross-Complainants,

v.

JENNIFER OSBELT, individually and doing
business as PALO ALTO TECHNICAL, and
DOES 1-10, inclusive,

Cross-Defendants.

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that Defendants DAVID D. MCDONALD, DONNA K.
3 MCDONALD, NATIONAL EXPERT WITNESS NETWORK ("NEWN") and Technology CLE
4 ("TCLE"), a California Limited Liability Company (collectively, "Defendants") hereby remove
5 to this Court the state court action described below.

6 **Introduction**

7 Plaintiff and Cross-Complainant Jennifer Osbelt brought this lawsuit alleging, *inter alia*,
8 breach of contract, breach of fiduciary duty, corporate waste and conversion. Removal is
9 appropriate because claims made by Plaintiff and Cross-Complainant Jennifer Osbelt arise under
10 the laws of the United States, namely, 29 U.S.C. § 1001 et seq (ERISA) and thereby invoke
11 federal question jurisdiction pursuant to 28 U.S.C. § 1331. Defendants have ascertained that the
12 jurisdictional requirements for removal to federal court have arisen based on responses recently
13 made by Plaintiff and Cross-Complainant Jennifer Osbelt in her deposition taken January 4 and
14 January 9, 2008.

15 **Background Information**

16 On June 5, 2007, Plaintiff and Cross Complainant Jennifer Osbelt ("Plaintiff")
17 commenced an action in the Superior Court of the State of California, County of San Mateo
18 against Defendants entitled *Osbelt v. David McDonald and Donna McDonald.*, Case No. CIV
19 463528 (the "State Court Action"), a copy of which is attached hereto as **Exhibit 2**. Defendants
20 and Cross-Complainants David McDonald, Donna K. McDonald, National Expert Witness
21 Network, a California LLC and Technology CLE, a California LLC filed a Cross-Complaint on
22 July 18, 2007, which is attached hereto as **Exhibit 7**. Plaintiff filed her First Amended Complaint
23 on November 30, 2007, including NEWN as an additional defendant, a copy of which is attached
24 hereto as **Exhibit A to Exhibit 15**. Defendants filed an Answer to First Amended Complaint on
25 January 8, 2008, a copy of which is attached hereto as **Exhibit 29**.

26 1. Pursuant to 28 U.S.C. § 1446(a), Defendants are attaching copies of all pleadings
27 and orders that have been filed the State Court Action to date. A copy of the Superior Court of
28 California, County of San Mateo Register of Actions is attached hereto as **Exhibit 1**.

1 2. Attached as **Exhibit 2** is a true and correct copy of the Complaint and Civil Cover
2 Sheet filed June 5, 2007.

3 3. Attached as **Exhibit 3** is a true and correct copy of Summons issued on June 5,
4 2007.

5 4. Attached as **Exhibit 4** is a true and correct copy of Notice of Acknowledgement of
6 Receipt of Summons signed by William J. Goines on behalf of Defendants David D. McDonald
7 and Donna McDonald, filed June 25, 2007.

8 5. Attached as **Exhibit 5** is a true and correct copy of Substitution of Attorney
9 replacing former attorney, Marc G. Van Niekerk, with new attorney, Joseph W. Cotchett, filed
10 July 11, 2007.

11 6. Attached as **Exhibit 6** is a true and correct copy of Answer to Complaint of
12 Jennifer Osbelt filed by David D. McDonald and Donna K. McDonald filed July 18, 2007.

13 7. Attached as **Exhibit 7** is a true and correct copy of Cross-Complaint of David D.
14 McDonald, Donna K. McDonald, National Expert Witness Network, LLC and Technology CLE,
15 LLC against Jennifer Osbelt, individually and doing business as Palo Alto Technical, filed July
16 18, 2007.

17 8. Attached as **Exhibit 8** is a true and correct copy of Answer of Jennifer Osbelt to
18 Cross-Complaint of David D. McDonald, Donna K. McDonald, National Expert Witness
19 Network, LLC and Technology CLE, LLC, filed August 22, 2007.

20 9. Attached as **Exhibit 9** is a true and correct copy of Case Management Statement of
21 Jennifer Osbelt filed September 26, 2007.

22 10. Attached as **Exhibit 10** is a true and correct copy of Case Management Statement
23 of David D. McDonald, Donna K. McDonald, National Expert Witness Network, LLC and
24 Technology CLE, LLC filed September 26, 2007.

25 11. Attached as **Exhibit 11** is a true and correct copy of Stipulated Protective Order
26 filed October 17, 2007.

27 12. Attached as **Exhibit 12** is a true and correct copy of Clerk's Notice of Jury Trial
28 and Mandatory Settlement Conference filed October 17, 2007.

1 13. Attached as **Exhibit 13** is a true and correct copy of Stipulation and Order to
2 Appropriate Dispute Resolution filed November 2, 2007.

3 14. Attached as **Exhibit 14** is a true and correct copy of Plaintiff's Ex Parte
4 Application for an Order Granting Leave to Amend Complaint; Memorandum of Points and
5 Authorities; Declaration of Sean E. Ponist filed December 4, 2007.

6 15. Attached as **Exhibit 15** is a true and correct copy of Stipulation and Order
7 Granting Leave for Plaintiff to File a First Amended Complaint filed December 4, 2007
8 (*containing First Amended Complaint as Exhibit A*).

9 16. Attached as **Exhibit 16** is a true and correct copy of Proof of Service of Ex Parte
10 Application and Supporting Documents filed December 7, 2007.

11 17. Attached as **Exhibit 17** is a true and correct copy of Amended Proof of Service
12 reflecting service of First Amended Complaint filed December 11, 2007.

13 18. Attached as **Exhibit 18** is a true and correct copy of Defendants' Notice of Motion
14 and Motion to Compel Plaintiff's Responses to Defendant's Request for Production of
15 Documents, Set One; Memorandum of Points and Authorities and Request for Attorney's Fees in
16 the Amount of \$2077, filed December 12, 2007.

17 19. Attached as **Exhibit 19** is a true and correct copy of Declaration of Cindy
18 Hamilton in Support of Motion to Compel Plaintiff's Responses to Defendant's Request for
19 Production of Documents, Set One, filed December 12, 2007.

20 20. Attached as **Exhibit 20** is a true and correct copy of Separate Statement of Items in
21 Dispute in Support of Defendants' Motion to Compel Plaintiff's Responses to Defendant's
22 Request for Production of Documents, Set One, filed December 12, 2007.

23 21. Attached as **Exhibit 21** is a true and correct copy of Plaintiff's Notice of Motion
24 and Motion to Compel Defendants David and Donna McDonald (1) to Produce Documents and
25 (2) for Sanctions.

26 22. Attached as **Exhibit 22** is a true and correct copy of Declaration of Sean E. Ponist
27 in Support of Plaintiff's Motion to Compel, filed December 18, 2007.
28

23. Attached as **Exhibit 23** is a true and correct copy of Separate Statement of Disputed Document Requests and Responses in support of the motion to Compel Production and for Sanctions, filed December 18, 2007.

24. Attached as **Exhibit 24** is a true and correct copy of Plaintiff's [Proposed] Order Granting Plaintiff's Motion to Compel Production of Documents and For Sanctions.

25. Attached as **Exhibit 25** is a true and correct copy of Plaintiff's Opposition to Motion to Compel Responses to Defendants' Request for Production of Documents and Motion for Sanctions, filed December 28, 2007..

26. Attached as **Exhibit 26** is a true and correct copy of Declaration of Ara Jabaghourian in Support of Plaintiff's Opposition to Motion to Compel Responses to Defendant's Request for Production of Documents and Motion for Sanctions.

27. Attached as **Exhibit 27** is a true and correct copy of Defendants' Opposition to Plaintiff's Motion to Compel Production and for Sanctions, filed January 2, 2008.

28. Attached as **Exhibit 28** is a true and correct copy of Declaration of Cindy Hamilton in Opposition to Plaintiff's Motion to Compel and for Sanctions, filed January 2, 2008.

29. Attached as **Exhibit 29** is a true and correct copy of the Answer of David McDonald, Donna McDonald and National Expert Witness Network to First Amended Complaint of Jennifer Osbelt, filed January 8, 2008.

The Parties

30. At the time of filing of the original Complaint, Plaintiff and Cross-Complainant Jennifer Osbelt was an individual who resided in Santa Mateo County, California, and was a citizen of the State of California. Complaint at ¶ 8, **Exhibit 2**. Based on testimony given at her depositions on January 4 and January 9, 2008, Plaintiff is now a resident of the State of New York.

31. Cross-Defendant Palo Alto Technical is a fictitious business names registered by Plaintiff in San Mateo County.

32. Defendant David McDonald is an individual residing in Magalia, California. David McDonald is a member of NEWN

33. Defendant Donna McDonald is an individual residing in Magalia, California. Donna McDonald is a member of NEWN.

34. Cross-Complainant National Expert Witness Network is a California Limited Liability Company.

35. Cross-Complainant Technology CLE is a California Limited Liability Company.

Timeliness of Removal

36. On January 3, 2008 and January 9, 2008 the deposition of Plaintiff and Cross-Defendant Jennifer Osbelt was taken and it first became ascertainable to Defendants that this case was removable to federal court. Plaintiff's Complaint and First Amended Complaint do not specifically indicate an ERISA claim or damages based on any mismanagement or misappropriation of Plaintiffs money through National Expert Witness Network, LLC 401(k) Profit Sharing Plan ("401(k) Plan"), however, in deposition, Plaintiff testified that Defendants used the 401(k) Plan as a vehicle to misappropriate her money without her permission or consent.

37. Specifically, Plaintiff testified as follows: "...They took my money and put it in this plan without my salary reduction form or a salary reduction form. So I'd already funded my IRA, and then they went ahead and put extra money into this plan without my permission and it exceeded my maximum for the year..." Deposition of Jennifer Osbelt, 166:14-19. A true and correct copy of the relevant excerpts of Plaintiff's deposition testimony are attached to the accompanying Declaration of Cindy Hamilton as **Exhibit A**.

38. 28 U.S.C. 1446(b) states that a Defendant shall remove "within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which has become removable..." In this case, Defendant did not receive notice that this case was removable as a federal question based on an ERISA claim until Plaintiffs deposition on January 3, 2008. "Defendants did not receive notice under Section 1446(b) of the facts indicating removability until plaintiff was deposed on September 30, 1987. The deposition constituted an "other paper" under the statute." Riggs v. Continental Banking Co. 678 F. Supp. 236 (N.D. Cal.).

Basis for Removal

39. An action is removable based on federal jurisdiction where the complaint on its face fails to disclose the basis of federal jurisdiction but deposition testimony reveals that Plaintiffs claims are governed by ERISA. Brooks v. Solomon Co., 542 F.Supp. 1229, 1230 (N.D.Ala. 1982).

40. At her deposition on January 3, 2008, Plaintiff's deposition testimony put Defendants on notice for the first time that Plaintiff had a claim arising under 29 U.S.C. § 1001 et seq (ERISA) that was removable as a federal question under 28 U.S.C. § 1331. Plaintiff testified in deposition that Defendants misappropriated her money into the 401(k) Plan without her consent. Deposition of Jennifer Osbelt, 166:14-19. 29 USC 1132(e)(1) states: "...the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, fiduciary...". As a participant and beneficiary under NEWN's 401(k) Plan, Plaintiff's action would appear to fall under 29 USC 1132(a)(3) as she appears to be seeking to enjoin a practice in violation of ERISA or to obtain appropriate relief to address violations: "A civil action may be brought...(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate relief (i) to redress such violations or (ii) to enforce any provision of this subchapter."

41. A claim under 29 USC 1132(a)(3) appears to be consistent with Plaintiffs claims for breach of fiduciary duty, as she testified that she is seeking through this lawsuit to have the funds placed in her behalf into the NEWN 401(k) Plan disgorged so that she does not have to pay any tax penalties: "I would rather have the money out of my 401(k) and put it in my personal checking account where it belonged". Deposition of Jennifer Osbelt, 168:22-24, Hamilton Decl. Ex. A. Plaintiff is further seeking damages based on the misappropriation of her money through the 401(k) Plan. Specifically, Plaintiff testified that she is claiming damages in the form of the penalty she will have to pay to withdraw her money from the 401(k) Plan and from the interest that money could have been earning in a different account: "Well, I can withdraw it with a penalty. So I'm losing that. And also, its just sitting in a money market, I believe. If I had it in

1 my Prudential account, I would be making a lot more money." Deposition of Jennifer Osbelt
2 173:7-11, Hamilton Decl. Ex. A.

3 42. This action is a civil action of which this Court has original jurisdiction under 28
4 U.S.C. § 1331 and is one which may be removed to this court by Defendants pursuant to the
5 provisions of 28 U.S.C. §§ 1441 and 1446 because the matter in controversy exceeds the sum of
6 \$75,000, exclusive of interest and costs, because Plaintiff Jennifer Osbelt's claimed economic and
7 compensatory damages, punitive damages, attorney's fees are equal to or in excess of the \$75,000
8 jurisdictional requirement.

9 **Conditions of Removal**

10 43. Written notice of the filing of this notice of removal is being filed with the
11 Superior Court of the County of San Mateo, and provided to all other parties as required by law.

12
13 WHEREFORE, Defendants David McDonald, Donna K. McDonald, National Expert
14 Witness Network and Technology CLE respectfully request that this action be removed
15 from the Superior Court of the County of San Mateo to the United States District Court
16 for the Northern District of California, because the action against them arises under the
17 laws of the United States.

18
19 Dated: January 24, 2008

GREENBERG TRAURIG, LLP

20
21 By: 
22 WILLIAM J. GOINES
CINDY HAMILTON




23 Attorneys for Movants/Defendants and Cross-
24 Complainants David D. McDonald, Donna K.
25 McDonald, National Expert Witness Network
26 and Technology CLE
27
28






Actions

Home Complaints/Parties Actions
Pending Hearings Images Case Report

Case CIV463528 - JENNIFER OSBELT VS DAVID MCDONALD ET AL

 Move To This Date

Viewed	Date	Action Text	Disposition	Image
	05/12/2008 9:00 AM DEPT. PJ	JURY TRIAL. TIME ESTIMATE: 10 DAYS 00:00 HOURS.		
	04/25/2008 9:30 AM DEPT. TBA	MANDATORY SETTLEMENT CONFERENCE		
	01/15/2008 9:00 AM DEPT. LM	HEARING: MOTION RE: MOTION TO COMPEL DEFS TO PRODUCE DOCS AND FOR SAN FILED BY JENNIFER OSBELT	VACATED	
	01/11/2008 9:00 AM DEPT. LM	HEARING RE: MOTION TO COMPEL PLAINTIFFS RESPONSES TO DEFENDANTS REQUEST FOR PRODUCTION OF DOCUMENTS.	OFF-CALENDAR	
	01/08/2008	E-FILING FEE PAID.	-	
N	01/08/2008	AMENDED ANSWER TO COMPLAINT OF JENNIFER OSBELT FILED BY DAVID D. MCDONALD, DONNA K. MCDONALD.	-	
	01/02/2008	E-FILING FEE PAID.	-	
N	01/02/2008	DECLARATION OF CINDY HAMILTON IN OPPOSITION TO PLAINTIFFS MOT TO COMPEL AND SANCTIONS FILED BY DAVID D. MCDONALD, DONNA K. MCDONALD, NATIONAL EXPERT WITNESS NETWORK, TECHNOLOGY CLE	-	
N	01/02/2008	OPPOSITION TO PLAINTIFFS MOTION TO COMPEL PRODUCTION AND FOR SANCTIONS FILED BY DAVID D. MCDONALD, DONNA K. MCDONALD, NATIONAL EXPERT WITNESS NETWORK, TECHNOLOGY CLE	-	
	12/28/2007	DECLARATION OF ARA JABAGCHOURIAN IN SUPPORT OF PLTF OPP TO MOT TO COMPEL RESPNS TO DEFT REQ FILED BY JENNIFER OSBELT	-	
	12/28/2007	OPPOSITION TO MOT TO COMPEL RESPONSES TO DEFT REQ FOR PROD DOCS & SANCTIONS FILED BY JENNIFER OSBELT	-	
	12/18/2007	PROPOSED ORDER RECEIVED.	-	
	12/18/2007	SEPARATE STATEMENT OF DISPUTED DOCUMENT REQUESTS AND RESPONSES IN SUPPORT OF THE MOTION TO COMPEL, FILED.	-	
	12/18/2007	DECLARATION OF SEAN E. PONIST IN SUPPORT OF PLAS MOTION TO COMPEL FILED BY JENNIFER OSBELT	-	
	12/18/2007	NOTICE OF MOTION AND MOTION TO COMPEL DEFENDANTS DAVID AND DONNA MCDONALD (1) TO PRODUCE DOCS (2) FOR SANCTIO FILED BY JENNIFER OSBELT	-	
	12/18/2007	MOTION FEE PAID BY JENNIFER OSBELT.	-	
	12/12/2007	E-FILING FEE PAID.	-	

N	12/12/2007	SEPARATE STATEMENT OF ITEMS IN DISPUTE IN SUPPORT OF MOT TO COMPEL PLTFS FURTHER RESPONSES, FILED.	-	
N	12/12/2007	DECLARATION OF CINDY HAMILTON IN SUPPORT OF DEFTS MOT TO COMPEL, ETC	-	
N	12/12/2007	NOTICE OF MOTION TO COMPEL PLTFS RESPONSES TO DEFTS REQ FOR PRODUCTION OF DOCUMENTS FILED BY DAVID D. MCDONALD, DONNA K. MCDONALD, NATIONAL EXPERT WITNESS NETWORK, TECHNOLOGY CLE	-	
	12/11/2007	AMENDED P/S BY MAIL PLTFS EX-PARTE APP FOR LEAVE TO AMEND ETC (SEE SERVICE LIST) FILED BY JENNIFER OSBELT.	-	
	12/07/2007	PROOF OF SERVICE (BY MAIL) OF EXPARTE APPLICATION AND SUPPORTING DOCS SERVED ON SEE SERVICE LIST WITH A SERVICE DATE OF 12/04/07 FILED.	-	
	12/04/2007	MOTION FEE PAID BY JENNIFER OSBELT.	-	
	12/04/2007	ORDER STIPULATION GRANTING LEAVE FOR PLAINTIFF TO FILE FIRST AMEND COMPLAINT, SIGNED BY JUDGE MIRAM ON 12/04/07 FILED.	-	
	12/04/2007	EX-PARTE APPLICATION FOR AN ORDER GRANTING LEAVE TO AMEND COMPLAINT FILED BY JENNIFER OSBELT	-	
	11/09/2007	STIP AND ORDER TO ADR SIGNED BY MARK R. FORCUM ON 11/08/07	-	
	11/02/2007	STIP & ORDER TO ADR NOT FILED. REASON: NO NEUTRAL S PHONE NUMBER AND NO DATE OF SESSION.	-	
	10/22/2007	PRINT COMBINED MANDATORY SETTLEMENT CONFERENCE AND JURY TRIAL OR COURT TRIAL NOTICE	-	
	10/17/2007	MOTION FEE PAID BY DAVID D. MCDONALD.	-	
	10/17/2007	STIPULATION AND ORDER PROTECTIVE ORDER SIGNED BY GEORGE A. MIRAM ON 10/10/07.	-	
	10/11/2007 9:00 AM DEPT. 8	CASE MANAGEMENT CONFERENCE	COMPLETED	N/A
	09/26/2007	E-FILING FEE PAID.	-	
N	09/26/2007	PROOF OF SERVICE OF CASE MANAGEMENT STATEMENT SERVED ON JENNIFER OSBELT BY OVERNIGHT WITH A SERVICE DATE OF 09/26/07.	-	
	09/26/2007	E-FILING FEE PAID.	-	
N	09/26/2007	CASE MANAGEMENT STATEMENT FILED BY DAVID D. MCDONALD, DONNA K. MCDONALD, NATIONAL EXPERT WITNESS NETWORK, TECHNOLOGY CLE.	-	
	09/26/2007	CASE MANAGEMENT STATEMENT FILED BY JENNIFER OSBELT.	-	
	08/22/2007	(S) ANSWER TO CROSS-COMPLAINT OF DAVID MCDONALD FILED BY JENNIFER OSBELT, REPRESENTED BY JOSEPH W COTCHETT	-	
	07/19/2007	FIRST PAPER FEE PAID BY NATIONAL EXPERT WITNESS NETWORK, TECHNOLOGY CLE.	-	
	07/19/2007	NOTE: CC OF MCDONALD ENTERED TODAY WAS ACTUALLY FILED ON 7/18/07.	-	
	07/19/2007	NO SUMMONS ISSUED FOR THIS COMPLAINT	-	
	07/19/2007	(S) CROSS-COMPLAINT OF DAVID D. MCDONALD, DONNA K. MCDONALD FILED	-	
	07/18/2007	(S) ANSWER TO COMPLAINT OF JENNIFER OSBELT FILED BY DAVID D. MCDONALD, DONNA K. MCDONALD, REPRESENTED BY CINDY HAMILTON	-	

	07/11/2007	SUBSTITUTION OF ATTORNEY FILED. FORMER ATTORNEY MARC G. VAN NIEKERK REMOVED AS TO JENNIFER OSBELT AND REPLACED WITH ATTORNEY JOSEPH W COTCHETT.	-	
	06/25/2007	NOTICE AND ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT OF JENNIFER OSBELT AS TO DAVID D. MCDONALD, DONNA K. MCDONALD FILED. SIGNED BY: WILLIAM J GOINES, ATTORNEY FOR DEFENDANTS. DATE SIGNED: 06/19/07	-	
	06/05/2007	CIVIL CASE COVERSHEET RECEIVED	-	N/A
	06/05/2007	AFFIDAVIT OF DELIVERY BY MAILING BY A. DE LEON FILED	-	N/A
	06/05/2007	30 DAY SUMMONS, ISSUED AND FILED.	-	N/A
	06/05/2007	(S) COMPLAINT FILED	-	N/A



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, <small>or number, and address</small>): Donald P. Gagliardi, Bar No. 138979 Marc G. van Niekerk, Bar No. 201329 Bergeson, LLP 303 Almaden Blvd., Suite 500 San Jose, CA 95110-2712 TELEPHONE NO.: 408-291-6200 FAX NO.: 408-297-6000		RECEIVED JUN 5 2007 CLERK OF THE SUPERIOR COURT SAN MATEO COUNTY
ATTORNEY FOR (Name): <u>Plaintiff</u>		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Mateo STREET ADDRESS: 400 County Center MAILING ADDRESS: Second Floor CITY AND ZIP CODE: Redwood City, CA 94063 BRANCH NAME:		
CASE NAME: Jennifer Osbelt v. David D. McDonald et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER: CIV 463528 JUDGE: DEPT:

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|

3. Type of remedies sought (check all that apply):
- a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive

4. Number of causes of action (specify):

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case (You may use form CM-015.)

Date: June 5, 2007

Marc G. van Niekerk

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

DANIEL J. BERGESON, Bar No. 105439
DONALD P. GAGLIARDI, Bar No. 138979
MARC G. VAN NIEKERK, Bar No. 201329
BERGESON, LLP
303 Almaden Boulevard, Suite 500
San Jose, CA 95110-2712
Telephone: (408) 291-6200
Telecopy: (408) 297-6000

Attorneys for Plaintiff
JENNIFER OSBELT

ENDORSED FILED
SAN MATEO COUNTY

JUN 5 2007

Clerk of the Superior Court
By A. De Leon
DEPUTY CLERK

SUPERIOR COURT STATE OF CALIFORNIA
COUNTY OF SAN MATEO

JENNIFER OSBELT,

Plaintiff,

vs.

DAVID D. MCDONALD, DONNA K.
MCDONALD, and DOES 1-10,
inclusive,

Defendants.

Case No.

CIV 463528

**COMPLAINT FOR BREACH OF
CONTRACT, BREACH OF FIDUCIARY
DUTY, ACCOUNTING, SLANDER
PER SE AND VIOLATIONS OF THE
BEVERLY-KILLEA LIMITED
LIABILITY COMPANY ACT**

DEMAND FOR JURY TRIAL

1 For her Complaint, plaintiff Jennifer Osbelt ("Osbelt") alleges as follows:

2 **NATURE OF THE ACTION**

3 1. This action arises out of breach of a written Operating Agreement and Articles of
4 Organization (the "Operating Agreement") dated as of May 13, 2004 among David D.
5 McDonald, his wife Donna K. McDonald (collectively, the "McDonalds") and Osbelt related to
6 NEWN, LLC. Pursuant to the Operating Agreement, owns 25% of NEWN while the McDonalds
7 own the remaining 75% in equal shares.

8 2. In the early part of 2007, Osbelt raised with the McDonalds various questions
9 related to a purported loan of \$210,000 by the McDonalds to NEWN which the McDonalds have
10 refused to satisfactorily answer. In addition, Osbelt learned that the McDonalds had provided
11 false information to NEWN's accountants, causing them to prepare and file false income tax
12 returns on behalf of NEWN and certain tax schedules related to Osbelt.

13 3. In order to ascertain answers to her questions, Osbelt repeatedly requested access
14 to NEWN's books and records. Despite Osbelt's right to such access under the Operating
15 Agreement and under California statute, the McDonalds have refused Osbelt access to NEWN's
16 books and records.

17 4. In addition, the McDonalds have excluded Osbelt from participating in the
18 management of NEWN, and have informed NEWN customers that Osbelt is leaving the expert
19 witness business and NEWN "to get married and have babies."

20 5. On March 26, 2007, David McDonald, on his own behalf, and that of his wife,
21 offered to purchase Osbelt's interest in NEWN for more than \$1.8 million, an offer which Osbelt
22 accepted.

23 6. Despite numerous discussions and demands regarding performance, the
24 McDonalds have failed to perform under the agreement to purchase Osbelt's interest in NEWN
25 and have continued to breach their fiduciary obligations and obligations under the Operating
26 Agreement and the Beverly-Killea Limited Liability Company Act.

27 7. This lawsuit follows.

THE PARTIES

8. Ms. Osbelt is an individual residing in Redwood Shores and is a member of National Expert Witness Network, LLC. Ms. Osbelt has over 10 years of high tech industry experience, with a focus on cable and wireless networking and security, web development, and client/server technology. She is familiar with the technologies applied to Internet and Intranet networks, cable and wireless networking and security, LAN/WAN infrastructure, client/server applications, relational database management systems, network performance management, and eBusiness technologies. Ms. Osbelt's recent work has been in providing expert witnesses and case management services to the legal profession in areas of high-technology.

9. National Expert Witness Network, LLC ("NEWN") is a California Limited Liability Company with its principal place of business at One Lagoon Drive, Suite 140 Redwood City, CA 94065. NEWN assists attorneys by providing a network of experts and consultants in high technology disciplines for intellectual property litigation.

10. David McDonald is an individual residing at 15309 Northlake Road, Magalia, CA 95954. David McDonald is a Member of NEWN.

11. Donna McDonald, David McDonald's wife, is an individual residing at 15309 Northlake Road, Magalia, CA 95954. Donna McDonald is a Member of NEWN.

12. Osbelt does not know the true names and capacities, whether individual, partnership, corporate, associate, or otherwise, of defendants Does 1 through 10, inclusive, and on that basis designates said defendants herein by such fictitious names. As the true names and capacities of defendants Does 1 through 10, inclusive, or any of them, become known, Osbelt will seek leave to amend this Complaint to state their true names and capacities. Osbelt is informed and believes, and on that basis alleges, that each of the defendants designated herein as Does 1 through 10, inclusive, is in some way liable, responsible or indebted to Osbelt in connection with the events and/or transactions referred to in this Complaint.

1 13. Osbelt is informed and believes, and on that basis alleges, that except where
2 otherwise explicitly alleged, each of the defendants, including Does 1 through 10, inclusive, is,
3 and at all relevant times herein mentioned was, the agent, partner, joint venturer, employee,
4 and/or conspirator of the remaining defendants, and is, and at all relevant times herein mentioned
5 was, in performing and failing to perform the acts and conduct hereinafter alleged, acting within
6 the course and scope of such agency, partnership, joint venture, employment, and/or conspiracy.
7 Osbelt is further informed and believes, and on that basis alleges, that the acts and conduct of
8 each of the defendants were known to, and authorized and ratified by, the remaining defendants,
9 and that each of the defendants is legally responsible for the conduct and damages herein alleged.

10 **JURISDICTION AND VENUE**

11 14. This Court has jurisdiction of this matter pursuant to California Code of Civil
12 Procedure ("CCP") section 410.10. Each of the defendants reside within the state.

13 15. Venue is proper in this judicial district pursuant to CCP § 395 because the
14 contract at issue was made in, or is to be performed, or the breach has occurred in, this county.
15 The amount in controversy exceeds the jurisdictional minimum amount of this Court.

16 **FACTUAL ALLEGATIONS**

17 16. On or about May 13, 2004, Osbelt and the McDonalds entered into an Operating
18 Agreement and Articles of Organization (the "Operating Agreement"). A copy of the Operating
19 Agreement is attached as Exhibit A. Pursuant to the Operating Agreement, Osbelt is a 25%
20 owner of NEWN, and the McDonalds each own 37.5% of NEWN.

21 17. The authority of Members to participate in the management of NEWN is set forth
22 in section 5 of the Operating Agreement. Pursuant to section 5 of the Operating Agreement,
23 each of the Members "will participate in the management of the Company affairs . . . and . . .
24 have exclusive authority to manage and conduct all the business of the Company, with all rights,
25 powers and authority that are conferred by law or are necessary, convenient or appropriate for
26 the managing of the Company's business . . ." (Ex. A, § 5.)

1 18. Pursuant to Section 6.5 of the Operating Agreement, NEWN's books and records
2 are to be maintained at its principal place of business and "[a]ll Members . . . have the right on
3 reasonable notice to the Company to . . . inspect and . . . copy the books and records of the
4 Company" (Ex. A, § 6.5.)

5 19. In the event of a so-called "Triggering Event," the "Company and other Members
6 shall have the option to purchase the Membership Interest in the Company of such Member . . .
7 at the price and on the terms provided in Section 8.8" of the Operating Agreement. (Ex. A, §
8 1.38.)

9 20. In late March 2007, Osbelt became aware of a purported loan from the
10 McDonald's to NEWN in an amount of \$210,000 ostensibly made in 2003. To Osbelt's
11 knowledge, the loan had not been reflected in NEWN's books and records at any time prior to
12 2007, and Osbelt requested an explanation from the McDonald's and documentary evidence of
13 the loan. The McDonald's refused to provide a satisfactory response to Osbelt's enquiries.

14 21. On March 26, 2007, David McDonald sent Osbelt an e-mail complaining about
15 Osbelt's enquiries concerning the loan. He also stated that Osbelt's "lack of trust [in the
16 McDonalds] is insulting to us completely unwarranted and frankly unacceptable. I think that it is
17 a good idea for you to move on." McDonald then went on to explain to Osbelt the contractual
18 procedure pursuant to the Operating Agreement for the McDonalds to purchase Osbelt's interest
19 ("The Company must determine that we wish to purchase membership shares; we do."), and the
20 calculation of the purchase price. McDonald calculated the purchase price of Osbelt's interest at
21 NEWN as \$1,886,063.80 and demanded that Osbelt accept or reject the offer that same day. A
22 copy of David McDonald's e-mail dated March 26, 2007 is attached as Exhibit B.

23 22. On March 26, 2007, and as requested by David McDonald, Osbelt responded to
24 McDonald's offer by e-mail stating, in pertinent part: "I will take your deal . . . [g]o ahead and
25 draw up the papers." A copy of Osbelt's e-mail dated March 26, 2007 is attached as Exhibit C.
26 On April 3, 2007, Osbelt left for a vacation in Hawaii.

1 23. While in Hawaii, Osbelt was contacted by her tax preparer. He advised her that,
2 according to the tax forms provided by NEWN, she owed the IRS an unexpected amount of
3 taxes. Osbelt requested from her tax preparer a copy of the Schedule K-1s, which reflect a
4 member's purported income from a limited liability corporation, submitted by NEWN. Osbelt
5 immediately realized the information on the schedules was false and attributed substantially
6 more of NEWN's annual taxable income to her than was proper under the Operating Agreement.
7 Osbelt's enquiries to the McDonalds concerning the discrepancies were rebuffed.

8 24. On her return from her vacation in Hawaii on April 17, 2007, Osbelt attempted to
9 contact the McDonalds to discuss the false Schedule K-1s, but they refused to speak with her.
10 On information and belief, the McDonalds also instructed NEWN's accountants not to discuss
11 any of NEWN's financial affairs with Osbelt. Furthermore, Osbelt learned that the McDonalds
12 had hired an individual named Tom Fisher to take over Osbelt's operational duties at NEWN.
13 Finally, on information and belief, the McDonalds began informing NEWN clients that Osbelt
14 has left NEWN and the expert witness business "to get married and have babies."

15 25. On or about April 20, 2007, Osbelt received a letter from US Bank advising her
16 that NEWN was overdue on renewing its line of credit with US Bank, and requesting certain
17 financial information from her to renew the NEWN Member's personal guaranties for the line of
18 credit, despite the fact that NEWN was purchasing Osbelt's interest in NEWN. A copy of US
19 Bank's letter dated April 17, 2007, is attached as Exhibit D. By this time, NEWN's indebtedness
20 to US Bank had grown to over \$260,000.

21 26. Concerned about the extent of NEWN's indebtedness and the McDonalds' refusal
22 to provide details about the loan, Osbelt contacted US Bank and informed it that she would not
23 sign as a guarantor until she had received details about the loan from the McDonalds.

24 27. On April 20, 2007, Osbelt sent David McDonald an e-mail in which she
25 requested, inter alia, to be allowed to inspect and copy the "the past 4 years of books and records
26 of [NEWN]" A copy of Osbelt's April 20, 2007 e-mail is attached as Exhibit E.

1 28. On May 5, 2007, David McDonald sent Chris Rodi ("Rodi"), Osbelt's husband,
2 an e-mail stating that he had been notified by US Bank that it was calling in the loan. Attached
3 to the e-mail was a letter from David McDonald to Rodi. That same day, Rodi responded that
4 Osbelt was unwilling to renew her personal guarantee to US Bank on behalf of NEWN and
5 explained her reasoning therefor. He also explained that any purported capital call under the
6 Operating Agreement would be premature and ineffective given the disparities that Osbelt had
7 found in NEWN's financial records, including the false Schedule K-1s. A copy of David
8 McDonald's e-mail dated May 5, 2007, the attached letter, and Rodi's response is attached as
9 Exhibit F.

10 29. On May 8, 2007, David McDonald sent Osbelt an e-mail to which he attached a
11 Notice of Default from US Bank to NEWN dated May 7, 2007. In his letter, McDonald
12 purported to invoke the provisions of Section 3.1 of the Operating Agreement and requested that
13 Osbelt contribute an amount of \$66,104.48 representing 25% of NEWN's indebtedness to US
14 Bank by May 23, 2007. A copy of McDonald's e-mail dated May 8, 2007 and the US Bank
15 notice dated May 7, 2007, are attached as Exhibit G.

16 30. That same day, May 8, 2007, and the next, May 9, 2007, Rodi, on behalf of
17 Osbelt, sent two e-mails to David McDonald assuring McDonald that Osbelt wanted to comply
18 fully with any obligation she had under the Operating Agreement but advising him that she was
19 unable to do so given discrepancy in NEWN's financial statements and the false Schedule K-1s,
20 and that the purported invocation of Section 3.1 of the Operating Agreement was ineffective. A
21 copy of Rodi's e-mails dated May 8 and 9, 2007 is attached as Exhibit H.

22 31. On May 10, 2007, David McDonald responded by e-mail to Rodi bluntly stating
23 "Jennifer has 13 days left to provide the additional cash . . ." By this time, it was clear that the
24 McDonalds were intent on forcing Osbelt out of NEWN by any means possible. A copy of
25 David McDonald's May 10, 2007 e-mail is attached as Exhibit I.

26 32. On May 17, 2007, Donald Gagliardi of Bergeson, LLP, on behalf of Osbelt, sent a
27 letter to E. Thom Rumberger ("Rumberger") of Greenberg Traurig, an attorney believed to

1 represent the McDonalds, reiterating Osbelt's request for access to NEWN's books and records;
2 reiterating Osbelt's position that the purported capital call was invalid; and suggesting that the
3 parties work toward a negotiated settlement of the issues between them. A copy of Donald
4 Gagliardi's letter of May 17, 2007 is attached as Exhibit J.

5 33. At Rumberger's request, attorneys for Osbelt attended a meeting at Rumberger's
6 offices on May 18, 2007 to initiate a dialogue between the parties. At that meeting, counsel for
7 Osbelt again reiterated that inspection of NEWN's books and records was a predicate to any
8 resolution of the dispute between the parties. Counsel for the McDonalds undertook to schedule
9 such inspection.

10 34. On May 21, 2007, and not having received a response from counsel for the
11 McDonald's to the May 17 Gagliardi letter or to the requests made at the May 18 meeting,
12 counsel for Osbelt sent another letter to Rumberger. Gagliardi concluded the letter by stating
13 "[p]lease regard this letter as the final request by Ms. Osbelt for a full inspection of the complete
14 books and records of NEWN" Gagliardi also provided a date for the inspection, May 24,
15 2007. A copy of Gagliardi's May 21, 2007 letter to Rumberger is attached as Exhibit K.

16 35. On May 22, 2007, Fred Adam ("Adam"), another attorney representing the
17 McDonalds, responded to Gagliardi by e-mail. In his e-mail, Adam stated "the Magalia location
18 [is] not an option [for the inspection] since the office is located in the home of [the McDonalds]."
19 Adam went on to state that the McDonalds required an "express list of what was being
20 requested." A copy of Adam's e-mail to Gagliardi dated May 22, 2007 is attached as Exhibit L.

21 36. Gagliardi responded by letter that same day, May 22, 2007. In his letter,
22 Gagliardi rejected Adam's attempt to limit the inspection to certain specified documents, but
23 provided a non-exclusive list of categories of records that Osbelt wished to inspect and copy.
24 Gagliardi also pointed out that inasmuch as the McDonalds had improperly elected to maintain
25 the books and records of NEWN in their home, it was inappropriate to use that fact as a reason
26 for not allowing Osbelt access to the records. Gagliardi again stated that Osbelt wished to

1 conduct the inspection on May 24, 2007. A copy of Gagliardi's May 22, 2007 letter to Adam is
2 attached as Exhibit M.

3 37. On May 23, 2007, Adam sent an e-mail at 6:39 pm to counsel for Osbelt in which
4 he stated: "[h]ope to get you a response to document request later tonight." A copy of Adam's e-
5 mail to Marc van Niekerk dated May 23, 2007 is attached as Exhibit N.

6 38. Later that evening, Van Niekerk sent Adam an e-mail at 8:06 pm noting that
7 Osbelt had still not received confirmation that she would be allowed access to NEWN's books
8 and records the next day, May 24, 2007, and requesting such confirmation. A copy of Van
9 Niekerk's e-mail to Adam dated May 23, 2007 is attached as Exhibit O.

10 39. A few minutes later, Adam responded to Van Niekerk's e-mail stating "tomorrow
11 won't work due to too short notice for scheduling, but we are trying to schedule for Friday [May
12 25]." A copy of Adam's e-mail to Van Niekerk dated May 23, 2007 is attached as Exhibit P.

13 40. On May 24, 2007, counsel for the McDonalds sent a letter to Gagliardi
14 purportedly responding to Osbelt's requests for access to NEWN's books and records, but
15 advancing numerous spurious arguments why access was not possible. Again, Adam specifically
16 informed counsel that Osbelt would not be allowed to inspect the records where they are
17 maintained. Adam went on to state that "it is our client's sincere belief that the records and other
18 materials provided by our client to date, or already in Ms. Osbelt's possession, comply with your
19 client's document request" A copy of Adam's letter to Gagliardi dated May 24, 2007 is
20 attached as Exhibit Q.

21 41. Counsel for Osbelt responded to Adam by letter dated May 25, 2007 refuting each
22 of Adam's contentions. Counsel for Osbelt reiterated Osbelt's request for access to source
23 documents, as opposed to spreadsheets and tables prepared by the McDonalds. A copy of the
24 letter dated May 25, 2007 from Van Niekerk to Goines is attached as Exhibit R.

25 42. Five days later, on May 30, 2007, Goines responded to Van Niekerk's letter of
26 May 25, 2007. In his letter, Goines made it clear that the McDonalds would not be allowing
27 Osbelt access to the books and records of NEWN or allow Osbelt access to the books and

1 records where they are maintained. A copy of Goines' May 30, 2007 letter to Van Niekerk is
2 attached as Exhibit S.

3 43. Despite the repeated and appropriate requests to allow Osbelt access to NEWN's
4 books and records, the McDonalds have refused and continue to refuse such access and it is
5 further clear that the McDonalds have no intention of complying with their obligations under
6 David McDonald's offer of March 26, 2007 to purchase Osbelt's interest in NEWN, which offer
7 was accepted by Osbelt, or under the Operating Agreement.

8 **FIRST CAUSE OF ACTION**
9 **(Breach of Contract: Agreement of Sale)**

10 44. Osbelt realleges paragraphs 1-43 above as though fully set forth herein.

11 45. On or about March 26, 2007, David McDonald, on his own behalf and that of his
12 wife, Donna McDonald, offered to purchase Osbelt's interest in NEWN for a purchase price of
13 \$1,886,063.80. McDonald specified that the offer was to be accepted or rejected that same day.

14 46. Osbelt accepted McDonald's offer that same day, March 26, 2007, as a
15 consequence whereof a valid and enforceable agreement of sale of Osbelt's share in NEWN to
16 the McDonalds in exchange for payment by the McDonalds to Osbelt of \$1,886,063.80 was
17 created.

18 47. Osbelt is, and at all times was, ready, willing and able to complete performance
19 under the agreement.

20 48. Without justification and in breach of its obligations under the agreement, the
21 McDonalds have failed to make payment to Osbelt the agreed upon purchase price of
22 \$1,886,063.80 or any part thereof.

23 49. As a result of the McDonalds' breach of the Agreement, Osbelt has been damaged
24 in an amount to be proven at trial, but in no event less than \$1,886,063.80, plus interest and costs
25 of suit.

26 **SECOND CAUSE OF ACTION**
27 **(Breach of Contract: Operating Agreement)**

28 50. Osbelt realleges paragraphs 1- 49 above as though fully set forth herein.

1 51. On or about May 13, 2004, Osbelt and the McDonalds entered into an Operating
2 Agreement and Articles of Organization (the "Operating Agreement").

3 52. The authority of Members to participate in the management of NEWN is set forth
4 in section 5 of the Operating Agreement. Pursuant to section 5 of the Operating Agreement,
5 each of the Members "will participate in the management of the Company affairs . . . and . . .
6 have exclusive authority to manage and conduct all the business of the Company, with all rights,
7 powers and authority that are conferred by law or are necessary, convenient or appropriate for
8 the managing of the Company's business" (Ex. A, § 5.)

9 53. Pursuant to Section 6.5 of the Operating Agreement, NEWN's books and records
10 are to be maintained at its principal place of business and "[a]ll Members . . . have the right on
11 reasonable notice to the Company to . . . inspect and . . . copy the books and records of the
12 Company" (Ex. A, § 6.5.)

13 54. Osbelt has performed all of her obligations under the Operating Agreement except
14 those obligations which have been waived or excused. Further, Osbelt is, and at all times was,
15 ready, willing and able to complete performance under the Operating Agreement.

16 55. The McDonalds, without justification, have breached the Operating Agreement
17 by, *inter alia*:

18 55.1 Wrongfully excluding Osbelt from participating in management of
19 NEWN;

20 55.2 Failing to maintain the books and records at NEWN's principal place of
21 business in Redwood City;

22 55.3 Denying Osbelt access to NEWN's books and records for the purpose of
23 copying them, despite repeated requests therefor;

24 55.4 Causing the books and records of NEWN to reflect false allocation of
25 NEWN's profits to Osbelt;

55.6 Causing NEWN's accountants to prepare and file false income tax returns on behalf of NEWN.

56. As a result of the McDonalds' breach of the Operating Agreement, Osbelt has been damaged in an amount to be proven at trial, but in no event less than \$1,886,063.80, plus interest and costs of suit.

THIRD CAUSE OF ACTION (Breach of Fiduciary Duty)

57. Osbelt realleges paragraphs 1- 56 above as though fully set forth herein.

58. As Osbelt's fellow members in NEWN and as holders of the majority interest in NEWN, the McDonalds owed Osbelt fiduciary duties of loyalty, good faith, candor and fair dealing.

59. The McDonalds have breached their fiduciary duties to Osbelt by:

59.1 Wrongfully excluding Osbelt from participating in management of
NEWN;

59.2 Failing to maintain the books and records at NEWN's principal place of business in Redwood City;

59.3 Denying Osbelt access to NEWN's books and records for the purpose of copying them, despite repeated requests therefor;

59.4 Causing the books and records of NEWN to reflect false allocation of
NEWN's profits to Osbelt;

59.5 Causing NEWN's accountants to prepare false financial statements on behalf of NEWN; and

59.6 Causing NEWN's accountants to prepare and file false income tax returns on behalf of NEWN.

60. As a result of the McDonalds' breach of their fiduciary duties to Osbelt, Osbelt has been damaged in an amount to be proven at trial.

FOURTH CAUSE OF ACTION
(Accounting)

61. Osbelt realleges paragraphs 1- 60 above as though fully set forth herein.

62. As Osbelt's fellow members in NEWN and as holders of the majority interest in NEWN, the McDonalds owed Osbelt fiduciary duties of loyalty, good faith, candor and fair dealing.

63. The McDonald's have controlled the maintenance of NEWN's financial books and records and have excluded Osbelt from access thereto.

64. Osbelt wishes to assign her membership interest in NEWN to the McDonalds against payment by the McDonalds pursuant to the formula set forth in the Operating Agreement.

65. The payment due from the McDonalds is unknown and cannot be ascertained without an accounting of the receipts and disbursements of all NEWN transactions.

66. The McDonalds have failed and refused, and continue to fail and refuse, to render such an accounting.

67. The foregoing actions entitle Osbelt to an accounting against the McDonalds to determine the purchase price of Osbelt's interest in NEWN.

FIFTH CAUSE OF ACTION
(Slander *Per Se*)

68. Osbelt realleges paragraphs 1- 67 above as though fully set forth herein.

69. On information and belief, the McDonalds have been informing NEWN clients that Osbelt has left NEWN and the expert witness business "to get married and have babies."

70. This statement by the McDonalds is false and known by the McDonalds to be false and was uttered with malice.

1 71. This statement by the McDonalds is injurious to Osbelt's professional and/or
2 business reputation.

72. The foregoing entitles Osbelt to compensatory and punitive damages for which the McDonalds are liable, according to proof.

SIXTH CAUSE OF ACTION

(Violations of Beverly-Killea Limited Liability Company Act §§ 17058, 17106)

73. Osbelt realleges paragraphs 1- 72 above as though fully set forth herein.

74. The McDonalds have violated Sections 17058, 17106 of the Beverly-Killea
Limited Liability Company Act by:

74.1 Failing to maintain the books and records of NEWN as they relate to the
internal affairs of NEWN for the current and past four fiscal years; and

74.2 Refusing to allow Osbelt to inspect and copy NEWN's books and records despite repeated, reasonable and appropriate requests.

14 75. The foregoing entitles Osbelt to an order pursuant to Section 17106(f) that the
15 McDonalds provide Osbelt with the information and financial statements of NEWN and
16 reasonable expenses, including attorneys fees, pursuant to Section 17106(g).

PRAYER

18 WHEREFORE, Osbelt prays for judgment jointly and severally against defendants as
19 follows:

- 20 a. For damages according to proof at trial, but in no event less than
21 \$1,886,063.80;
22 b. For an accounting;
23 c. For an order pursuant to Section 17106(f) of the Beverly-Killea Limited
24 Liability Company Act;
25 d. For punitive damages as determined by a jury;
26 e. For pre-judgment interest at the legal rate;

f. For costs of suit, including attorneys' fees;

g. For such other and further relief as this Court deems just and proper.

Dated: June 5, 2007

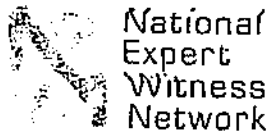
BERGESON, LLP

By: 

Marc G. van Niekerk

Attorneys for Plaintiff
JENNIFER OSBELT

Exhibit A



National Expert Witness Network, LLC OPERATING AGREEMENT & ARTICLES OF ORGANIZATION

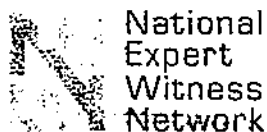
THIS OPERATING AGREEMENT is entered into as of May 13, 2004 by: David D. McDonald, Donna K. McDonald & Jennifer Osbelt (referred to individually as a Member and collectively as the Members). The Members desire to form a limited liability company ("Company") under the Beverly-Killea Limited Liability Company Act.

The Members enter into this Agreement to form and provide for the governance of the Company and the conduct of its business, and to specify their relative rights and obligations. The Members have formed a limited liability company under the Beverly-Killea Limited Liability Company Act. The Articles of Organization of the Company filed with the California Secretary of State August 7, 2002 are hereby adopted and approved by the Members.

NOW THEREFORE, the Members agree as follows:

ARTICLE I: DEFINITIONS

- 1 The following terms used in this Operating Agreement shall (unless otherwise expressly provided herein or unless the context otherwise requires) have the following respective meanings
 - 1.1 "AGREEMENT" shall refer to this Operating Agreement
 - 1.2 "Articles of Organization" is defined in Corporations Code section 17001(b) as applied to this Company.
 - 1.3 "Act" means the Beverly-Killea Limited Liability Company Act (California Corporations Code §§17000-17655), including amendments from time to time.
 - 1.4 "Assignee" means a person who has acquired a Member's Economic Interest in the Company, by way of a Transfer in accordance with the terms of this Agreement, but who has not become a Member.
 - 1.5 "Available Cash" means all net revenues from the Company's operations, including net proceeds from all sales, refinancing, and other dispositions of Company property that the Manager, in the Manager's sole discretion, deems in excess of the amount reasonably necessary for the operating requirements of the Company, including debt reduction and Reserves.
 - 1.6 "Book Depreciation" means, with respect to any item of Company property for a given fiscal year, a percentage of depreciation or other cost recovery deduction allowable for federal income tax purposes for such item during that fiscal year equal to the result (expressed as a percentage) obtained by dividing (1) the Fair Market Value of that item at the beginning of the fiscal year (or the acquisition date during the fiscal year), by (2) the federal adjusted tax basis of the item at the beginning of the fiscal year (or the acquisition date during the fiscal year). If the adjusted tax basis of an item is zero, the Manager may determine Book Depreciation, provided that he does so in a reasonable and consistent manner.
 - 1.7 "Capital Contribution" means, with respect to any Member, the amount of the money and the Fair Market Value of any property (other than money) contributed to the Company (net of liabilities secured by such contributed property that the Company is considered to



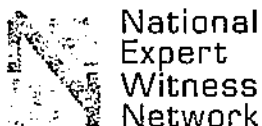
National Expert Witness Network, LLC OPERATING AGREEMENT & ARTICLES OF ORGANIZATION

assume or take "subject to" under IRC section 752) in consideration of a Percentage Interest held by such Member. A Capital Contribution shall not be deemed a loan.

- 1.8 "Capital Event" means a sale or disposition of any of the Company's capital assets, the receipt of insurance and other proceeds derived from the involuntary conversion of Company property, the receipt of proceeds from a refinancing of Company property, or a similar event with respect to Company property or assets.
- 1.9 "Capital Profits and Losses" and "Taxable Capital Profits and Losses" mean the Company's Profits or Losses or Taxable Profits or Losses attributable to sales, condemnations, transfers or other dispositions of Company capital assets or interests therein, and insurance proceeds received with respect to Company capital assets.
- 1.10 "Code" or "IRC" means the Internal Revenue Code of 1986, as amended, and any successor provision.
- 1.11 "Company" means the company named in Article II of this Agreement.
- 1.12 "Confidential Information" is defined in Article X, Section 10.2.
- 1.13 "Corporations Code" ("Corp C") means the California Corporations Code.
- 1.14 "Fair Market Value" is defined as one times (1x) the gross income received by the Company during the twelve (12) month period preceding receipt of written notification by the Company of the Member's death, bankruptcy, incompetence or insanity or at any time if no written notice is given to the Company.
- 1.15 "Gross Income" is defined as the difference between sales (customer payments) and sub-contractor fees paid (consultant payments). For Example:

Total Sales:	\$1,000,000.00
Sub-Contractor Fees:	<u>\$ (750,000.00)</u>
	\$ 250,000.00
Operating Expenses	\$ 150,000.00
Gross Profit	\$ 100,000.00
Taxes	<u>\$ (40,000.00)</u>
Net Profit	<u>\$ 60,000.00</u>

- 1.16 "Losses" means the Company's annual losses, including capital losses, as determined in accordance with generally accepted accounting principles on the cash accounting basis.
- 1.17 "Majority" refers to the vote of Members who own more than fifty percent (50%) of the total interests owned by all Members in that class.
- 1.18 "Members" shall refer to the Parties and reference to a "Member" shall be to any one of the Parties.
- 1.19 "Member Units" or "Units" shall refer to the Units issued to the Members and represent the contributions of capital to the Company entitling the holder to an interest in the Net Profits, Net Losses and distributions of the Company.
- 1.20 "Membership Interest" means a Member's rights in the Company, collectively, including the Member's Economic Interest, any right to Vote or participate in management, and any right to information that concerns the business and affairs of the Company.



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- 1.21 "Notice" means a written notice required or permitted under this Agreement. A notice shall be deemed given or sent when deposited, as certified mail or for overnight delivery, postage and fees prepaid, in the United States mails; when delivered to Federal Express, United Parcel Service, DHL WorldWide Express, or Airborne Express, for overnight delivery, charges prepaid or charged to the sender's account; when personally delivered to the recipient; when transmitted by electronic means, and such transmission is electronically confirmed as having been successfully transmitted; or when delivered to the home or office of a recipient in the care of a person whom the sender has reason to believe will promptly communicate the notice to the recipient.
- 1.22 "Partnership" shall refer to the Partnerships created under this Agreement.
- 1.23 "Percent of the Members" means the specified total of Percentage Interests of all the Members.
- 1.24 "Percentage Interest" means a fraction, expressed as a percentage, the numerator of which is the total of a Member's Capital Account and the denominator of which is the total of all Capital Accounts of all Members.
- 1.25 "Person" means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability Company, or other entity, whether domestic or foreign.
- 1.26 "Profits" means the Company's annual profits, including capital gains, and the term
- 1.27 "Property" shall refer in part to the real property described in Schedule "B", if any, and interests therein owned by the Company.
- 1.28 "Pro-rata share" shall mean a Member's pro-rata share determined by dividing the total number of units held by a Member by the total number of outstanding units.
- 1.29 "Proxy" has the meaning set forth in the first paragraph of Corp C §17001(ai). A Proxy may not be transmitted orally.
- 1.30 "Regulations" ("Reg") means the income tax regulations promulgated by the United States Department of the Treasury and published in the Federal Register for the purpose of interpreting and applying the provisions of the Code, as such Regulations may be amended from time to time, including corresponding provisions of applicable successor regulations.
- 1.31 "Reserves" means the aggregate of reserve accounts that the Manager, in the Manager's sole discretion, deems reasonably necessary to meet accrued or contingent liabilities of the Company, reasonably anticipated operating expenses, and working capital requirements.
- 1.32 "Successor in Interest" means an Assignee, a successor of a Person by merger or otherwise by operation of law, or a transferee of all or substantially all of the business or assets of a Person.
- 1.33 "Substituted Member" is the assignee of a Member who is admitted to the Company in the place and stead of his assignor.
- 1.34 "Tax Item" means each item of income, gain, loss, deduction, or credit of the Company.
- 1.35 "Taxable Profits" means the Company's annual profits, including capital gains/
- 1.36 "Taxable Losses" means the Company's annual losses including capital losses, as determined in the Company's information tax return as from time to time amended, prepared by the Company's accountants or tax attorney for federal income tax purposes, and determined on the cash basis. The terms "Operating Profits" or "Operating Losses" mean the Company's annual Profits or Losses from the ongoing business operations of the



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Company's, and excluding Profits or Losses attributable to sales, condemnations, transfers or other dispositions of Company's property or interests therein, and insurance proceeds received with respect to Company's property, all as determined in accordance with generally accepted accounting principles on the cash basis. The term "Taxable Operating Profits" or "Taxable Operating Losses" mean the Company's Taxable Profits or Taxable Losses from ongoing business operations of the Company's, and excluding taxable Profits or Losses attributable to sales, condemnations, transfers or other dispositions of Company's capital assets or interest therein, and insurance proceeds received with respect to Company's property except that Taxable Operating Profits include income from a sale or exchange of a capital asset which is taxed at ordinary income rates because of the recapture of depreciation, and including the recapture of investment tax credits because of any early disposition of a capital asset.

- 1.37 "Transfer" means, with respect to a Membership Interest or any element of a Membership Interest, any sale, assignment, gift, Involuntary Transfer, Encumbrance, or other disposition of such a Membership Interest or any element of such Membership Interest, directly or indirectly, other than an Encumbrance that is expressly permitted under this Agreement.
- 1.38 "Triggering Event" is defined in On the happening of any of the following events (Triggering Events) with respect to a Member, the Company and the other Members shall have the option to purchase the Membership Interest in the Company of such Member (Selling Member) at the price and on the terms provided in Section 8.8 of this Agreement:
 - 1.38.1 The death, incapacity, bankruptcy, or withdrawal of a Member, or the winding up and dissolution of a corporate Member, or merger or other corporate reorganization of a corporate Member as a result of which the corporate Member does not survive as an entity.
 - 1.38.2 The failure of a Member to make the Member's Capital Contribution under the provisions of Article III of this Agreement.
 - 1.38.3 The occurrence of any other event that is, or that would cause, a Transfer in contravention of this Agreement.
 - 1.38.4 "Vote" means a written consent or approval, a ballot cast at a meeting, or a voice vote.
- 1.39 "Voting Interest" means, with respect to a Member, the right to Vote or participate in management and any right to information concerning the business and affairs of the Company provided under the Act, except as limited by the provisions of this Agreement. A Member's Voting Interest shall be directly proportional to that Member's Percentage Interest.

ARTICLE II: ARTICLES OF ORGANIZATION

- 2 The name of the Company shall be National Expert Witness Network, LLC
- 2.1 The Articles of Organization were filed with the California Secretary of State on August 7, 2002, File Number 200222110003. A copy of the Articles of Organization as filed is attached to this Agreement as Exhibit A.



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- 2.1 The principal executive office of the Company shall be 15309 Northlake Road, Magalia, CA 95954-9052, or such other place or places as may be determined by the Manager from time to time.
- 2.2 The initial agent for service of process on the Company shall be David D. McDonald, whose address is 15309 Northlake Road, Magalia, CA 95954-9052. The Managers may from time to time change the Company's agent for service of process.
- 2.3 The Company will be formed for the purposes of engaging in the business of providing Expert Witness referral services to the legal profession
- 2.4 The Members intend the Company to be a limited liability company under the Act. Neither the Manager nor any Member shall take any action inconsistent with the express intent of the parties to this Agreement.
- 2.5 The term of existence of the Company shall commence on the effective date of filing of Articles of Organization with the California Secretary of State, and shall continue until terminated by the provisions of this Agreement or as provided by law
- 2.6 The names and addresses of the Initial Members are as set forth in Exhibit B.
- 2.7 The names and business addresses of the Managers are as follows:

<u>Name</u>	<u>Address</u>
David D. McDonald	15309 Northlake Road, Magalia, CA 95954-9052
Donna K. McDonald	15309 Northlake Road, Magalia, CA 95954-9052
Jennifer Osbelt	650 Oak Grove Avenue, Suite 1, Menlo Park CA 94025

- 2.8 The Members shall be the Managers of the Company.

ARTICLE III: CAPITAL CONTRIBUTIONS & ADMISSION OF NEW MEMBERS

- 3 Capital Contributions. The Members will complete Schedule "A", setting forth the amount of capital contribution to the Company credited to each Member, the percentage of Company ownership or number of Company Units issued therefore, and the amounts of additional capital contributions to be made by the dates set forth on Schedule "A". Member obligations to make additional capital contributions will be evidenced by promissory notes.
- 3.1 Need for Additional Capital Contributions. If at any time the Members determine that the cash available to the Company is, in the Members' reasonable judgment, inadequate to meet the then existing and projected needs of the Company, the Members may request the Members to provide the required additional cash of his pro-rata share of the Company Units. The Members will advise the Company in writing of the cash contribution to be made and the purpose for which the proceeds will be used. The price and terms may be more or less favorable than those on which the initial Units were offered. Within fifteen (15) days after the mailing of this notice by the Members, each Member may elect in writing to provide all, any part of, or none of his pro-rata share of the additional cash. If any Member does not elect to contribute his pro-rata share of the additional cash, the pro-rated share of that Member's Units will be available for purchase, on a pro-rata basis, by the other Members who do contributed the required additional cash. If all the additional cash is not provided by the Members, the Members may offer and sell the unsold



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additional units to other persons on the same terms and conditions as were available to the Members or on such other terms and conditions as the Members may decide, which terms may be more or less favorable than the offer to the Members.

- 3.1.1 All sales of additional units under this section are subject to compliance with applicable federal and provincial securities laws. If, acting upon advice of counsel to the Company, the Members determine in their reasonable judgment that to qualify the sale of these units it would be necessary or appropriate to allow only some of the Members and/or only certain other persons who are not Members to participate in the offering, the Members may determine in their sole discretion, those who will be offered the opportunity to participate.
- 1.40 Capital Accounts. An individual capital account will be maintained for each Member. The capital account of each Member will consist of his original cash or cash equivalent contribution of capital, increased by (i) his additional capital contributions, and (ii) his share of Company Profits, and decreased by (iii) distributions to the Member, whether in cash or in kind, and (iv) his share of Company Losses.

ARTICLE IV: ALLOCATIONS AND DISTRIBUTIONS

- 4 Operating Profits. Operating profits, operating losses, taxable operating profits and taxable operating losses and credits shall be allocated to the Members separately pursuant to the appropriate provisions governing general partnerships found in California Corporations Code Section 16100 et seq. (<http://www.ss.ca.gov/business/gp/gp.htm>)
- 4.1 Capital Profits. Capital Profits, Capital losses, Taxable Capital Profits and Taxable Capital Losses will be allocated to the Members up to the amounts of available cash distributed to them in excess of cumulative net operating profits allocated to them from the inception of the Company, then to Members, if any, with negative capital accounts up to the amount of their negative capital account balances and thereafter to the Members pro-rata in accordance with their ownership of Company units. For the purposes of this section, cash distribution before of the year following the transaction giving rise to the capital profits or losses or taxable capital profits or losses will be deemed to have been distributed during the preceding fiscal year.
- 4.2 Periodic Computation. Profits and losses and taxable profits and taxable losses shall be computed periodically, but no less than quarterly. A proportional adjustment of profits and losses shall be made between a Member and a Member's assignee as of the date that the Members' assignee becomes a substituted Member. All other allocations of profits and available cash which are allocated to the Members will be allocated among them in proportion to the number of units held by each Member.
- 4.3 Available Cash. Available cash will be distributed each year, except as follows:
- 4.3.1 Available cash in amounts in excess of cumulative net operating profits allocated to the Members from the inception of the Company will be distributed to the Members until the Members have received distributions of available cash in excess of these operating profits equal to the amount of their initial capital contributions.
- 4.3.2 Available cash will then be distributed to the Members in proportion to the number of units held by each Member.

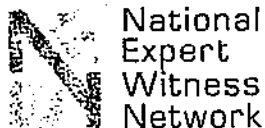


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- 4.3.3 Upon liquidation of the Company, available cash will be distributed to the Members as provided above, except that after making the distributions under (a) and (b) above, and taking into account cash contributions, if any, to be made by the Members on liquidation in accordance with ARTICLE IX: DISSOLUTION AND LIQUIDATION, available cash will be distributed to the Members in amounts equal to each Member's respective capital account balance.
- 4.4 Reimbursement of Member expenses. Members shall be reimbursed for any and all reasonable expenditures that they incur and pay on behalf of the Company.
- 1.41 Company Loans. If the Members deem it to be in the Company interest, the Company may borrow from a Member or Members. Interest will be payable on the loans at an annual rate agreed by the Members and allowable by law.

ARTICLE V: MANAGEMENT

- 5 Powers of Members. Except as otherwise expressly stated herein the Members will participate in the management of the Company affairs. All decisions of the Company will be made by the Members and the Members will have exclusive authority to manage and conduct all the business of the Company, with all rights, powers and authority that are conferred by law or are necessary, convenient or appropriate for the managing of the Company's business subject only to those exceptions expressly set forth in this AGREEMENT. The Members agree that all Company decisions shall be made in accordance with ARTICLE XI: MISCELLANEOUS PROVISIONS of this Agreement and that the following powers or actions shall require approval under the said Section:
- 5.1.1 to borrow funds from any source for Company purposes, and as security therefore, to mortgage or pledge the property or any other assets of the Company, whether real or personal; to repay in whole or in part, refinance, recast, increase, modify or extend any mortgage or mortgages or other encumbrances on the property or any other assets of the Company, and in connection therewith, to execute for and on behalf of the Company any extension, renewals, or modifications of such mortgages or other encumbrances, new mortgages or other encumbrances in lieu of existing mortgages or other encumbrances, and to execute notes, bonds and other evidences of indebtedness;
- 5.1.2. to act for the Company in all transactions concerning the Company real or personal property or business affairs, including the execution of all contracts, leases, deeds, options, loan obligations, deeds of trust and notes;
- 5.1.3 to amend this Agreement and the Certificate of Company. Any mortgagee, grantee, creditor or any person dealing with the Company shall be required to investigate the authority of the Members and to secure the approval or confirmation by all Members of any act of the Members in connection with the conduct of the Company business. The signature of all of the Members will be necessary to convey any interest in Company real property and the Members will prepare and record a Statement of Company to this.
- 5.2 The Members will be liable to the Company in connection with the management of the Company's affairs for acts or omissions which constitute gross negligence or willful misconduct, including any willful breach of this AGREEMENT.



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- 5.3 **Competition.** The Members will devote as much of their time and attention to the Company as they each deem necessary or advisable to meet the purpose of the Company and they may, during the continuance of this AGREEMENT, engage in any activity for their own profit and advantage without the consent of the Members. The Members have other business interests and may engage in any other businesses, trades, professions or employment whatsoever, including the acquisition, ownership, management and disposition of the following:
- 5.3.1 Their own accounts or in Company with or as employees, officers, directors or stockholders of any other entity, to the extent which such interests or activities do not compete with the business of the Company, and the Members will not have to account to or otherwise make available to the Company or the Members any other non-competitive business or investment profits or opportunities that might be available to the Members. Situations may arise where the Members or any of them owe conflicting duties to this Company and to other persons or entities. The Members will resolve these conflicts in good faith and will be liable to the Company only for acts or omissions which constitute gross negligence or willful misconduct.
- 5.4 **Compensation of the Members.** The Members are to receive no compensation by way of salary from the Company. The Company, may, however, contract with one or more of the Members to provide services to the Company provided that the compensation for these services is comparable to what the Company would have had to pay an unrelated party to provide these services.

ARTICLE VI: ACCOUNTS AND ACCOUNTING

- 6 **Method of Accounting.** Company books will be maintained on the cash accounting basis in accordance with generally accepted accounting principles; provided that the Company will, to the extent allowed by law, keep books and reports for income tax purposes on the cash basis method of accounting.
- 6.1 **Fiscal year.** Unless changed by the Members, the fiscal year of the Company for accounting and income tax purposes will be the Calendar year, provided that if the Company is dissolved and the business of the Company is not continued pursuant to ARTICLE IX: DISSOLUTION AND LIQUIDATION, the final fiscal year of the Company will end on the date the Company is terminated.
- 6.2 **Quarterly and Annual Statements.** The Members will cause quarterly and annual financial statements of the operations of the Company to be prepared. The financial statements will include a balance sheet, income statement, statement of sources and uses of cash and a statement of Members' equity. The report will also include a statement describing financial transactions between the Members and the Company during the quarter, including the services rendered or to be rendered by the Members and the amount of fees, commissions and other compensation received or to be received by the Members and other supporting statements as the Members may deem relevant. To the extent it is feasible to do so; the annual financial statements will be E-mailed to the Members within twenty (20) days after the close of each fiscal quarter.
- 6.3 **Income Tax Information.** The Members will cause the Company to provide each Member with information on the Company's taxable income or loss and each class of income,



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gains, loss or deduction that is relevant to reporting Company income under the laws of the State of California or United States in which any Member may be obligated to file income tax returns. The information will show each Member's distributive share of each class of income, gain, loss, deduction or other tax attribute. To the extent it is feasible to do so, the income tax information will be furnished to the Members within seventy-five (75) days after the close of the Company fiscal year.

- 6.4 Accountants. The Members will cause the Company to engage as employees or independent contractors such bookkeepers, accountants and tax advisors as the Members may deem appropriate. The costs of these services will be borne by the Company.
- 6.5 Access to Accounting Records. The Company books and records will be maintained at the Company's principal place of business, except as may be necessary for the convenience of accountants and tax advisors who may temporarily remove portions of the Company's books and records in connection with their work. All Members will have the right on reasonable notice to the Company to either personally or through authorized agents inspect and, at their own expense, copy the books and records of the Company, provided that all Company information must remain confidential and cannot be disclosed to third parties if to do so would prejudice or impair any rights of the Company or its Members.

ARTICLE VII: MEMBERSHIP, MEETINGS, VOTING, INDEMNITY

- 7 Limited Liability and Indemnity. The Members will have liability with respect to liabilities and obligations of the Company equal to the proportionate share of units held by each Member. The Members agree to indemnify and save one another harmless from any liability in connection with the liabilities of the Company above and beyond any Member's proportionate share in same.
- 7.1 Voting Rights. Each Member shall be entitled to vote upon matters affecting the basis structure and business of the Company, including the following matters:
 - 7.1.1 Admission of Members. Admission of Members. The admission of a new Member requires the vote or written consent of the holders of one-hundred percent (100%) of the Company units. This provision is not subject to amendment by less than said percentages;
 - 7.1.2 Termination of the Company;
 - 7.1.3 Development of business activities.
- 7.2 Other Matters. The approval of all other matters as to which Members may or shall vote shall require the vote or written consent of the holders of more than twenty-five percent (25%) of the Company units.
- 7.3 Amendments. Notwithstanding anything to the contrary contained in this AGREEMENT, this Agreement may not be amended without the consent of the holders of more than twenty-five percent (25%) of the Company units.
- 7.4 Voting Procedure. The Members may vote only by written instrument. Written proxies or Powers of attorney to vote Company units will not be honored.
- 7.5 Meeting Rules. Meetings of the Members may be called by the Members or by Members holding more than twenty percent (20%) of the then outstanding Company units, for any matter for which the Members may vote as set forth herein. Upon receipt of a written request, either in person or by registered mail, stating the purpose of the meeting, the



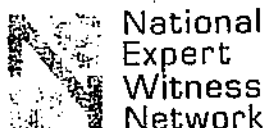
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Members shall provide all Members, within ten (10) days after receipt of such request, written notice (either in person or by registered mail) of a meeting and the purpose of such meeting to be held on a day not less than fifteen (15) nor more than sixty (60) days, after receipt of said request, at a time and place convenient to the Members. Votes taken at a meeting must be in accordance with ARTICLE VII: MEMBERSHIP, MEETINGS, VOTING, INDEMNITY.

ARTICLE VIII: TRANSFERS OF MEMBERSHIP INTERESTS

- 8 The Members may sell or otherwise transfer the Company's properties but the consent of all of the Members shall be required in connection with a sale or other transfer of any portion of the holdings of the Company.
- 8.1 Assignment. No Member shall assign (which term as used herein shall include a gift, devise, sale, transfer, encumbrance or other disposition, whether voluntary, involuntary, or by act of law) all or any part of his interest in the Company otherwise than in accordance with the provisions and subject to the limitations of this ARTICLE XI: MISCELLANEOUS PROVISIONS, and any assignment not in accordance with this Section XIII will be void and of no effect. Any Member at any time and from time to time may assign all or any part of his Company interest to any person pursuant to a bona fide written offer, but not until after having first offered it to the Company on the same terms as contained in the bona fide written offer. The Member so desiring to assign all or part of his interest pursuant to this Section XIII shall notify the Company in writing and furnish the Members with a copy of the bona fide written offer.
- 8.2 The Members shall determine whether the Company shall purchase the units. If the assigning Member shall not within thirty (30) days after delivery of this notice receive written notice from the Members that the Company desires to purchase the entire interest to be assigned, the assigning Member may assign this interest pursuant to the bona fide written offer at any time within forty-five (45) days after the termination of the thirty-day period. The assignee will not, however, become a substituted Member except in accordance with ARTICLE XI: MISCELLANEOUS PROVISIONS Admission of Substituted Members. Notwithstanding anything above to the contrary, no assignee, by operation of law or otherwise, of the whole or any portion of a Member's interest will become a substituted Member unless the written consent of all of the Members to such substitution has been obtained and until such assignee shall execute and acknowledge such instruments, in form and substance satisfactory to the Members, as the Members shall deem necessary or desirable to effectuate the admission of such assignee as a substituted Member and to confirm the agreement of such assignee to be bound by all the terms and provisions of this Agreement and the Certificate of Company, as same may be amended, with respect to the interest acquired.
- 8.3 As to assignees who do not become substituted Members or as to assignees before substitution as Members, both the Company and the Members shall be entitled to treat the assignor of any interest in the Company as the absolute owner thereof in all respects, and shall incur no liability for distributions of cash or other property made to him, until such time as the written assignment has been received by and recorded on the books of the

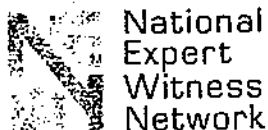


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- Company. All reasonable expenses, including solicitors' fees, incurred by the Company in connection with an assignment, shall be borne by the assignee.
- 8.4 A substituted Member shall have all the rights, obligations and liabilities of a Member under this AGREEMENT. An assignee of Company units who does not become a substituted Member shall have none of the rights of a Member under this agreement.
- 8.5 Purchase of Member's Interest. The Members may elect to have the Company purchase a Member's units. This election must be made by delivery of a written notice of its exercise upon the Member or his executor, administrator or other legal representative within ninety (90) days after receipt of written notification by the Company of the Member's intent to sell the Member's interest in the Company.
- 8.6 The Members may elect to have the Company purchase a deceased, bankrupt, incompetent or insane Member's units. This election must be made by delivery of a written notice of its exercise upon the Member or his executor, administrator or other legal representative within ninety (90) days after receipt of written notification by the Company of the Member's death, bankruptcy, incompetence or insanity or at any time if no written notice is given to the Company.
- 8.7 Purchase price. The purchase price to be paid for a Member's interest under this Article shall be equal to the amount that would have been received by that Member if all the assets of the Company had been liquidated in a sale at fair market value on the date of the notice of election to the Member or the date the Member ceased to be a Member, and the proceeds of such liquidation distributed pursuant to the provisions of such section. The purchase price shall not, however, include any amount that might be received for the Company's goodwill, if any.
- 8.8 Fair market value is defined as one times (1x) the gross income received by the Company during the twelve (12) month period preceding receipt of written notification by the Company of the Member's death, bankruptcy, incompetence or insanity or at any time if no written notice is given to the Company.
- 8.9 Manner of Payment. The purchase price for the Member's interest shall be paid as follows:
- 8.10 Ten Percent (10%) within 60 days after the determination thereof;
- 8.11 The balance in full within forty-eight (48) months thereafter at the rate of one-sixteenth (1/16) of the total balance amount each calendar quarter; until paid, this obligation shall be evidenced by a promissory note of the Company bearing interest at the rate per annum allowable by law. The note will provide that the Company may pay all or a part thereof at any time during the term thereof without prepayment penalty

ARTICLE IX: DISSOLUTION AND WINDING UP

- 9 Dissolution Events. The death, bankruptcy, incompetence or insanity of a Member will dissolve or terminate the Company. The sale of all or substantially all of the assets of the Company or the vote of the Members to dissolve the Company also dissolves the Company. In the event that the Company is dissolved and not continued, the Members shall make the necessary arrangements to wind up and terminate the affairs of the Company in accordance with applicable laws.



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- 9.1 Liquidation Distributions. Upon dissolution, if the Company is not continued, the Company will engage in no further business other than that necessary to wind down the business of the Company and liquidate its assets. Any profit or loss on disposition of Company properties during liquidation shall be allocated in accordance with the provisions of Article VI *Allocation of Profits and Losses* of this AGREEMENT. After retention by the Company of sufficient proceeds to meet and satisfy operating costs and the cost of sale, as determined in the sole discretion of the Members, the proceeds of liquidation (the "Liquidation Distribution") will then be distributed in the following order:
- 9.1.1 Payments to creditors of the Company, other than Members, in the order of priority provided by law;
- 9.1.2 Payments to Members for loans made by them to the Company;
- 9.1.3 Distributions shall then be made in accordance with the provisions of Section VIII (1) Available Cash.
- 9.2 If upon liquidation of the Company and distribution of its assets, as provided above, any Member would have a negative balance in his capital account, the negative balance will constitute a debt to the Company and shall be paid in cash by the Member on demand by the Company.

ARTICLE X: BANK ACCOUNTS

- 10 The Company shall open and maintain in the name of the Company accounts with such banks or savings and loan associations as are necessary to effectuate this AGREEMENT and the Company's business. Funds from all such accounts shall be deposited and withdrawn on the signature of one of the Managing Members, or duly authorized representatives of the Members.

ARTICLE X: SUCCESSORS IN INTEREST

- 11 This Agreement shall in all respects bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators or other legal representatives, subject to the provisions of this AGREEMENT limiting rights of assignment and the rights of non-substituted Members.

ARTICLE XI: MISCELLANEOUS PROVISIONS

- 12 Power of Attorney. Each Member hereby irrevocably constitutes and appoints each of the Members with full power of substitution, his true and lawful attorney-in-fact for him and in his name, place and stead, for his use and benefit, to sign, acknowledge, file and record:
- 12.1 The Operating Agreement of the Company and any amendments thereto which are made to reflect amendments to this AGREEMENT or to reflect any reductions in the amount of the contributions of a Member or which are required.
- 12.2 Any fictitious business name certificate or amendment thereto or other instrument or document which may be required to be filed or recorded by the Company, on its own



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- behalf or on behalf of the Members, under the laws of the State of California or any other jurisdiction.
- 12.3 Any document that may be required to effect the continuation of the Company, the admission of a substituted Member or additional Limited or Members, or the dissolution or termination of the Company, and any amendment to this Agreement or the Company's Operating Agreement in connection therewith, provided that such continuation, admission, dissolution, or termination is in accordance with the terms of this Agreement pursuant to the Limited Liability Company Act.
- 12.4 The foregoing provisions do not supersede any other provisions of this AGREEMENT, nor is this power of attorney to be used to deprive any Member of its rights under this AGREEMENT, but is intended only to provide a simplified system for execution, filing and recording of documents and to permit the use of the provisions of the Limited Liability Company Act. The power of attorney granted herein is coupled with an interest, is irrevocable and shall survive any assignment of a Member's interest in the Company.
- 12.5 Amendment of Operating Agreement. An amendment to the Company's Operating Agreement may be signed, personally or by an attorney-in-fact, by:
- 12.5.1 A Member and the new Member if the amendment is caused by the addition of a Member; or
- 12.5.2 A Member, the substituted Member and the transferring Member, if the amendment is caused by the substitution of a Member.
- 12.6 Notices. All notices under this AGREEMENT shall be in writing and shall be given to the parties at the addresses hereinafter set forth and to the Company at its principal office, or at such other address as any of the parties may from time to time specify.
- 12.7 Counterparts. This AGREEMENT may be signed in any number of counterparts, all of which when taken together shall constitute the original instrument.
- 12.8 Severability. In the event that any provision of this AGREEMENT shall be held unenforceable, such provision shall be severed and the remainder of this AGREEMENT shall nevertheless remain in full force and effect.
- 12.9 Gender. All references herein to "he", "him" or "his" shall be deemed where appropriate, references to "she", "her", or "hers" or to "it" or "its".
- 1.42 Applicable Law. This AGREEMENT shall be deemed to be made and performed in, and shall be governed and construed in accordance with the laws of the State of California



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ARTICLES OF ORGANIZATION

This OPERATING AGREEMENT ("AGREEMENT") is made this 13th day of May, 2004 by and between the undersigned whose names and addresses are set forth below for the purpose of forming a Limited Liability Company.

Dated this 13th Day of May, 2004

IN WITNESS WHEREOF, THE PARTIES HAVE SIGNED THIS AGREEMENT

A handwritten signature in cursive script, reading "Jennifer Osbelt".

Jennifer Osbelt
650 Oak Grove Avenue, Suite 1
Menlo Park, CA 94025
(650) 473-1113

Date: 6/1/04

A handwritten signature in cursive script, reading "Donna K. McDonald".

Donna K. McDonald
15309 Northlake Road
Magalia, CA 95954-9052
(530) 873-2620

Date: 6/4/04

A handwritten signature in cursive script, reading "David D. McDonald".

David D. McDonald
15309 Northlake Road
Magalia, CA 95954-9052
(530) 873-2620

Date: 6/4/04

SCHEDULE "A"**CAPITAL CONTRIBUTIONS OF PARTNERS:**

<u>Partnership Partner</u>	<u>Contribution</u>	<u>Agreed Upon Cash Value of Contribution</u>	<u>Units Credited</u>
David D. McDonald &			
Donna K. McDonald Jointly	\$100,000.00	\$100,000.00	75
Jennifer Osbelt	\$ 00.00 ⁽¹⁾	\$ 33,333.33	25

Note (1): Jennifer Osbelt's contribution to the PARTNERSHIP is other than cash and consists of years of experience in the Expert Witness Referral industry and client and consultant control that she brings to the Partnership for which she is granted 25 Partnership Units.

From: Dave McDonald [mailto:dmcDonald@newnexperts.com]
Sent: Monday, March 26, 2007 1:22 PM
To: 'Jennifer Osbelt'
Cc: 'Donna Brelsford'
Subject: NEWN

Dear Jennifer:

I personally believe that your wish to buy a house has really clouded your judgment. I think you need to step back and reevaluate your situation. At this point you apparently cannot accept the way in which I run NEWN and the rather substantial draw you receive and accept the fact that the distribution of NEWN profits is what actually comprises your income. The fact you cannot afford a house is simply not my problem nor the problem of NEWN.

You clearly do not trust Donna and I and your contention that there is some hidden checking account is ridiculous. I tell you the QuickBooks register and the US Bank registers are identical and they are reconciled each week by LeAnn Andrews. If there is no trust there is no partnership. This lack of trust is insulting to us completely unwarranted and frankly unacceptable. I think that it is a good idea for you to move on.

Our Operating Agreement provides an exit procedure for you and it sounds like you wish to exercise that option. Section 8 of the Agreement stipulates that all Members have to agree and we do. The Company must determine that we wish to purchase your membership shares; we do. You cannot assign them without our permission. The purchase price for your member shares is also stated in Section 8 that the purchase price is the fair market value is defined as one times (1x) the gross income received by the Company during the preceding twelve (12) months. Payment terms are 10% of the purchase price, i.e., 10% within 60 days after the effective date of the termination of the Agreement; the balance to be paid over 48 months at the rate of 1/16ths of the Principal amount each calendar quarter all secured by promissory note. No interest payment is stipulated in the Agreement.

The value of the company pursuant to Section 8 is provided in the attached QB report:

Sales for 3/1/06 through 3/31/07 is \$7,544,255.18 at value 1X = \$7,544,255.18

Your 25% share = \$1,886,063.80

You will receive payment within 60 days of the termination of your membership in NEWN for \$188,606.38
Each subsequent calendar you will receive payment of 1/16th of the balance of \$1,697,457.42 or \$106,091.09 per quarter.

If you and Chris don't like it here then you can leave and buy a house somewhere else. Don't lose sight of the fact that at the point your membership agreement is terminated your draw and any expense support from NEWN stops. There is nothing in the Agreement regarding continuation of benefits. Health benefits, exclusive of the NEWN funded dental plan, are covered through COBRA for 18 months for which you are financially responsible.

You need to make a decision today about whether or not you are playing on our team or yours. If it is yours then I will have the termination notices ready within a day.

Regards,
Dave McDonald



National
Expert
Witness
Network

15309 Northlake Road
Magalia, CA 95954-9052
530-873-7890, Extension 201
Fax: 530-873-7891
www.newnexperts.com

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This Email and its attachments have been scanned by Norton and found to be virus free.

From: Jennifer Osbelt [mailto:josbelt@newnexperts.com]
Sent: Monday, March 26, 2007 3:24 PM
To: 'dmcdonald@newnexperts.com'
Cc: 'Donna Brelsford'
Subject: RE: NEWN

Dave:

If you want to terminate me just for asking to see the transactions totaling 210,000, then go ahead and fire me. I will take your deal, but not because I asked for it. People that tell me I haven't earned what I worked for usually don't receive a good reaction from me, and I don't appreciate being told that I earn more than I am worth. Go ahead and draw up the papers.

Jennifer

From: Dave McDonald [mailto:dmcdonald@newnexperts.com]
Sent: Monday, March 26, 2007 1:22 PM
To: 'Jennifer Osbelt'
Cc: 'Donna Brelsford'
Subject: NEWN

Dear Jennifer:

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You need to make a decision today about whether or not you are playing on our team or yours. If it is yours then I will have the termination notices ready within a day.

Regards,
Dave McDonald



National
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Chico Branch
260 E Second Street
Chico, CA 95928
530 896-8380
530 896-8388 fax

April 17, 2007

National Expert Witness Group
Jennifer Osbelt
One Lagoon Drive Suite 140
Redwood City Ca, 94065

Re: Renewal of \$300,000 Revolving line of Credit Ln #6517388162

Dear Ms. Osbelt:

The revolving line of credit for National Expert Witness matured April 5, 2007. I understand that you are discussing your option to sell your interest in NEWN but until such action is completed you will be considered a guarantor on this line. We will need the following items from you so that we may complete the renewal of this line. When the sale of your interest is complete we will remove you at that time. Please provide the following information:

Jennifer Osbelt

- Current personal financial statement (form enclosed)
- Signed Personal Tax Returns for 2005 and 2006

**Per the loan agreement the line must be at a zero balance for 30 consecutive days during the term. This requirement has not been met for this year. Please be aware that the line will need to rest for 30 consecutive days during the next term after approval of the renewal.*

Please forward the above information as soon as possible to my attention. If you have any questions please feel free to call myself at 896-8391 or Tina Haro at 846-7396:

Thank you,

Kiley Patterson
Asst. Relationship Manager
Cc: David McDonald
Tina Haro

From: Jennifer Osbelt [mailto:josbelt@patechnical.com]
Sent: Friday, April 20, 2007 1:42 PM
To: 'dmcdonald@newnexperts.com'
Cc: 'Tom Fisher'; 'Steve Sutter'; 'LeAnn M. Andrews, CPA'; 'dbrelsford@newnexperts.com'
Subject: RE: Partner Distribution

Dave,

As you note in your email, during times when "there wasn't sufficient cash in the NEWN bank account to cover" all of our draws, the LOC was used to cover required draws until the funds were available from operations to cover the advance. It is grossly unfair of you to change this policy at the exact moment you send me a K-1 showing my income as twice that of what I was actually distributed during 2006. Suggesting to the entire working group that I had somehow created this situation, when I have no access to our finances since you deleted my password to the Quickbook system is equally unfair.

However, if you decide to go forward with your policy change, Chris and I will be forced into the position of having to sell our house and moving our family into an apartment to pay the tax bill. In this case, I need an updated timeline on delivery of the draft purchase documents for my LLC interest in NEWN. In your email of March 31, you note that the transaction would be completed in the two weeks after my return, or by May 2, 2007.

As I'm sure you are aware, the acceptance letter you emailed to me (which I executed on March 27, 2007) provides for NEWN's acceptance of my email offer of March 27, 2007 to sell my LLC interests. For your convenience, I've attached my March 27 email. As you can see, my March 27 email expressly accepts your offer of approximately \$1.8 million for my LLC interests (i.e. "I will take your deal"). However, on March 31, 2007, you indicated by email that the purchase price amount would be different based on conversations you had with your legal counsel.

I am hoping you will be able to provide me with an updated offer for your purchase price so that I may re-evaluate my acceptance of the deal in light of your change in the terms of your offer. As I'm sure you are aware, the operating agreement provides me the ability to sell my LLC interests to third parties, as well (giving you the right to match any offer I receive, of course). In light of the situation I have been put in by your change in policy at NEWN, please understand I will have to do what is necessary to ensure I am getting the maximum amount possible for my share in NEWN.

I look forward to receiving the proposed documents soon.

I would also like to exercise my explicit rights under California LLC law for the following:

1. to receive a copy of NEWN's filed tax return
2. copies of the past 6 year's tax returns be promptly delivered to me by the LLC Manager at the LLC's expense.

3. to go there and inspect and copy the past 6 years financial statements and tax returns, and the past 4 years books and records of the LLC as they relate to the internal affairs of the LLC at any time during normal business hours of the LLC.

Does Monday and/or Tuesday work? I assume the company will be open under normal operating hours next week. It will only be Chris, me, and my accountant driving up. Thank you.

Best Regards,

Jennifer Osbelt

From: Chris Rodi [mailto:christopher.rodi@gmail.com]
Sent: Saturday, May 05, 2007 11:08 PM
To: dmcDonald@newnexperts.com
Cc: josebelt@patechnical.com; Steve Sutter
Subject: Re: NEWN Line of Credit

Dave,

We are in receipt of your letter. Jennifer has decided it is not prudent to personally guarantee NEWN's line of credit. Since you have removed her from all aspects of NEWN's operations, she now has no knowledge or control over the use of the credit or the underlying assets which secure the credit facility. Further, your failure to comply with the terms of the line of credit over the most recent 12 months, per US Bank's recent communications directly with Jennifer, provides added incentive to ensure she is not a personal guarantor on this line of credit in the future.

As majority holders, it is yours and Donna's decision whether or not a capital call is required. However, until the erroneous K-1's from 2004, 2005 and 2006 are amended NEWN cannot provide a definitive balance for Jennifer's capital account, and therefore cannot make the capital call. As I'm sure you are aware, an accurate capital account balance must be known to ensure that no positive balance is available to offset any capital call amount. Until the corrections are made, you cannot definitely say that no positive balance is available.

We look forward to your determination Tuesday of the timeframe for correcting NEWN's tax returns and capital accounting, and your decision, once the corrections are completed, as to whether or not a capital call is necessary.

Chris

On 5/4/07, Dave McDonald <dmcDonald@newnexperts.com> wrote:

Chris, we have been notified by telephone this afternoon that US Bank is calling the NEWN LOC note. It becomes past due tomorrow. Attached is a letter outlining the situation.

Regards,

Dave McDonald

15309 Northlake Road

Magalia . CA 95954-9052

530-873-7890, Extension 201

Fax: 530-873-7891

www.newnexperts.com

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National Expert Witness Network

May 4, 2007

VIA ELECTRONIC MAIL

Christopher Rodi, Esq.
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304

Dear Chris:

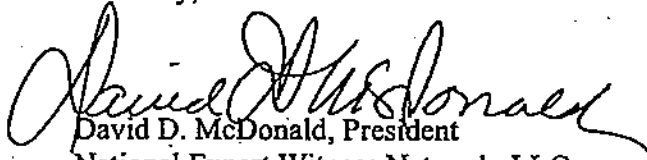
It is my understanding that Jennifer has asked that all communication go through you. If I am mistaken, please advise me immediately, and I will send this letter directly to Jennifer.

We have been advised that US Bank will issue a demand today for the immediate payment in full of the NEWN Line-of-Credit. The LOC was due on April 4th, 2007 and is past due tomorrow. The total amount due as of today including interest is \$264,206.25.

Jennifer's refusal to provide the necessary financial information to US Bank is the direct cause of this note being called. This has caused serious financial problems and we are now trying to determine how to cover this unforeseen expense. The Company is taking into consideration a capital call to the Members to satisfy the NEWN LOC debt. This decision will be made shortly.

For obvious reasons, I am asking Jennifer to reconsider her position and to take all reasonable steps to correct this problem. In all honesty, I do not know if compliance with US Bank's request at this late date will be enough.

Sincerely,


David D. McDonald, President
National Expert Witness Network, LLC

DDM:dm

Original to follow via US Mail

Gail C. Simmons

From: Dave McDonald [dmcdonald@newnexperts.com]
Sent: Tuesday, May 08, 2007 7:22 PM
To: 'Chris Rodi'; josbell@patechnical.com
Cc: Tom Fisher'; jfr@robinsonwood.com; kiley.patterson@usbank.com
Subject: Notice of NEWN Capital Call
Attachments: image001.png; NEWN LOC call Notice 5-8-07.pdf; US Bank LOC Note Call Notice 5-8-07.pdf

Dear Chris:

Please note my attached letter and the attached US Bank Letter. Time is of the essence. Originals of my letter and a copy of the US Bank letter will follow by FedEx tomorrow for delivery Thursday 5/10/07.,

Regards,
Dave McDonald



National Expert Witness Network
15309 Northlake Road
Magalia, CA 95954-9052
530-873-7890, Extension 201
Fax: 530-873-7891
www.newnexperts.com

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5/14/2007



National Expert Witness Network

May 8, 2007

VIA ELECTRONIC MAIL

Ms. Jennifer Osbelt, Member
c/o Christopher Rodi, Esq.
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304

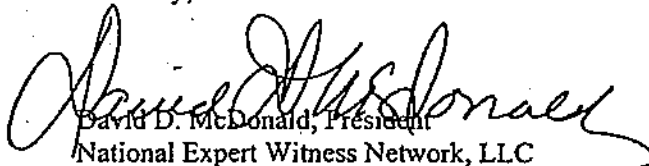
Dear Chris:

Attached hereto is a copy of the US Bank Notice of Default on the NEWN Line of Credit. Jennifer Osbelt's failure to fulfill her Member obligations to NEWN in providing US Bank with the financial information required by the Bank for the renewal of this note has led to this default.

The majority Members have determined that the cash available to the Company is inadequate to meet the demand payment of US Bank. Pursuant to Paragraph 3.1 of the NEWN Articles of Organization, the majority Members of the Company are requesting all Members to provide the required additional cash equal to their pro-rata share of the Company Units. The Capital Call of \$264,419.53 will be used to expire the US Bank Line of Credit. The capitalization of the Company stipulates 75% of this Capital Call is to come from David and Donna McDonald and 25% from Jennifer Osbelt. Ms. Osbelt's Capital Call contribution is therefore \$66,104.88.

In accordance with Paragraph 3.1 of the Articles of Organization, Ms. Osbelt has 15 days from the date of this mailing or notification by the Company to provide any or all or none of her pro-rata share of the additional cash required. All Members are required to participate and provide their pro-rata share within 15 days of this notice, or by 7:30 p.m. May 23rd, 2007.

Sincerely,



David D. McDonald, President
National Expert Witness Network, LLC

DDM:dm
Original to follow via US Mail

Chico Branch
260 E Second Street
Chico, CA 95928
530 895-8380
530 895-8386 fax

May 7, 2007

National Expert Witness Network LLC
15309 Northlake Road
Magalia Ca 95954

RE: NOTICE OF DEFAULT/MATURITY
Obligor No. 6517388162 Obligation No. 26

Dear David & Donna McDonald and Jennifer Osbelt:

National Expert Witness Network LLC is obligated to U.S. Bank National Association pursuant to a revolving line of credit dated as of January 10, 2005 (including any amendments thereto, the "Agreement"), pertaining to the above-referenced obligations (the "Loan"). Capitalized terms use in this letter but not defined herein shall have the meanings as provided in the Agreement.

Bank hereby gives you notice that the Loan matured on April 5, 2007 at which time it became due and payable in full. The failure to pay on the Maturity Date is a default under the Agreement. As of May 7, 2007, the outstanding balance of the Loan, which is now due and payable in full, is \$264,419.53 which consists of principal of \$262,500.00, interest of \$1919.53 and late fees of \$0.

Interest continues to accrue at a per diem rate of \$71.09375 for each day after the Maturity Date that the Loan remains unpaid. The per diem rate will change with any change in a variable interest rate index.

Effective as of the Maturity Date, Bank will not advance any additional funds under the Note.

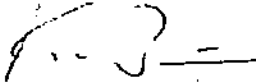
US Bank hereby gives Borrower notice that the entire unpaid principal balance and all accrued interest and late charges are now due and payable and hereby demands immediate payment thereof. US Bank further reserves the right to exercise each, any and all of the rights and remedies available to US Bank under the Agreement and any and all other documents which evidence the Loan and at law to collect all of the amounts due without further demand, protest, presentation or further notice.

TIME IS OF THE ESSENCE

Please contact me to make arrangements to pay the Loan in full or if you have any questions.

Sincerely,

U.S. BANK NATIONAL ASSOCIATION

A handwritten signature in black ink, appearing to read "Kiley Patterson", with a horizontal line extending to the right.

Kiley Patterson
Asst. Relationship Manager

cc: Tina Haro-Relationship Manager, Liesl Schmidt-Senior Lender

Gail C. Simmons

From: Chris Rodi [christopher.rod@gmail.com]
Sent: Wednesday, May 09, 2007 2:24 PM
To: dmcdonald@newnexperts.com
Cc: josbelt@patechnical.com; jfr@robinsonwood.com
Subject: Re: Notice of NEWN Capital Call

Dave,

In furtherance of my email below, I learned from your CPA this morning that NEWN will be making adjustments to its 2005 financial statements, and that NEWN's book keeper is reviewing the 2004 financial statements and additional changes are possible. It is noted that Jennifer, as a member of NEWN, was not notified of this development.

In light of the capital call notice you sent to Jennifer on May 8, 2007, and subject to my initial response to such notice copied below, Jennifer requires that you provide her with full descriptions of all adjustments to the 2004 and/or 2005 financial statements. As you are aware, any such changes will render inaccurate the financial records Jennifer has previously been provided by NEWN in her capacity as a member. As described in my email copied below, Jennifer cannot evaluate her options with respect to the capital call until you provide her with the information to which she is entitled, and which NEWN is legally required to accurately maintain. As such, the 15 day response period cannot be initiated until NEWN has provided Jennifer with such information.

Therefore, Jennifer reiterates her request for an updated accounting of NEWN's capital accounts reflecting the amendment of NEWN's 2004, 2005 and 2006 Form K-1's and adds to her request a detailed description of any and all adjustments made to the financial records which NEWN has previously provided to her.

Jennifer wants to comply fully with her obligations under the operating agreement with respect to the capital call, and will do so immediately upon receipt of the required information detailed above. Jennifer would also like to express her worries that NEWN's failure to comply with her repeated requests will result in permanent financial harm to the business.

A copy of this correspondence will be sent to you via mail.

Chris

On 5/8/07, Chris Rodi <christopher.rod@gmail.com> wrote:

Dave,

Jennifer is in receipt of the capital call notice you sent via email on May 8, 2007.

Jennifer strongly wishes to comply fully and immediately with her obligations pursuant to the operating agreement of NEWN. However, as I have repeatedly communicated to you, it is impossible for Jennifer to appropriately evaluate her responsibilities pursuant to any capital call until NEWN has provided her with amended Form K-1's for 2004, 2005 and 2006 (or an accurate accounting from your CPA as to how these tax filings will be amended) so that she can know the actual balance of her capital account with NEWN.

This correspondence serves to explicitly notify NEWN that Jennifer intends to fully comply with the operating agreement with respect to the capital call, but requires the information detailed above before she is able to do so. Until such time as that information is provided, Jennifer is unable to

5/14/2007

comply, and as such, the 15 day response period to the capital call cannot be initiated.

There is significant written correspondence to and from you dating back nearly two months indicating that you have been fully aware that NEWN's capital accounts are currently inaccurate. Multiple requests have been made in writing to you requesting that you address this issue. I have even personally spoken to NEWN's CPA, who is fully aware of this issue. Further, just days ago I explicitly explained to you in writing Jennifer's inability to comply with any capital call because of this issue. Instead of addressing this issue, you chose to ignore your duties as NEWN's manager and Chief Executive Officer.

Jennifer will comply with the operating agreement with respect to the capital call immediately upon receipt of the required information detailed above.

A copy of this email will also be delivered to you via mail.

Thank you.

Chris

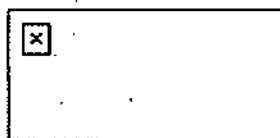
On 5/8/07, Dave McDonald <dmcdonald@newnexperts.com> wrote:

Dear Chris:

Please note my attached letter and the attached US Bank Letter. Time is of the essence. Originals of my letter and a copy of the US Bank letter will follow by FedEx tomorrow for delivery Thursday 5/10/07.,

Regards,

Dave McDonald



15309 Northlake Road

Magalia, CA 95954-9052

530-873-7890, Extension 201

Fax: 530-873-7891

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----- Forwarded message -----

From: **Dave McDonald** <dmcDonald@newnexperts.com>

Date: May 10, 2007 4:54 PM

Subject: Capital Call

To: Chris Rodi <christopher.rod@gmail.com>

Chris:

The capital call is driven by NEWN's failure to renew the loan pursuant to their Line of Credit terms for which Jennifer refused to comply. The company does not have the capital to pay off this loan. Please refer to Paragraph 3.1 of the Articles of Organization

The need is clear; we have a note called by US Bank. The authority to make this capital call is also clearly outlined in Paragraph 3.1.

Jennifer has 13 days left to provide the additional cash for her pro-rata share, or \$66,104.88.

Regards,

Dave McDonald

15309 Northlake Road

Magalia, CA 95954-9052

530-873-7890, Extension 201

Fax: 530-873-7891

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BERGESON, LLP

ATTORNEYS AT LAW

303 ALMADEN BOULEVARD, SUITE 500
SAN JOSE, CALIFORNIA 95110
TELEPHONE (408) 291-6200
FACSIMILE (408) 297-6000
WWW.BE-LAW.COM

May 17, 2007

Via Facsimile & U.S. Mail

E. Thom Rumberger, Esq.
Greenberg Traurig
1900 University Avenue, 5th Floor
East Palo Alto, CA 94303

Re: NEWN, LLC and TCLE, LLC

Dear Mr. Rumberger:

This firm represents, and I write on behalf of, Jennifer Osbelt, who holds a 25 percent interest in National Expert Witness Network, LLC ("NEWN") and Technology CLE, LLC ("TCLE"). We understand that you represent David & Donna McDonald, who together hold the remaining 75 percent interest in both NEWN and TCLE. If our understanding as to your affiliation with the McDonalds is incorrect, please so advise and we will communicate directly with them or their counsel.

We write in an effort to begin the process of negotiating an amicable parting of the business relationship between your clients and ours. Ms. Osbelt has determined, based on recent events, that trust and confidence among the parties has deteriorated to such an extent that it is no longer viable to continue the relationship. From correspondence that I have reviewed, I am assuming that your clients have a similar view. Obviously, in order for our client to evaluate her position, she will require complete access to the financial records of both NEWN and TCLE. I trust that once Ms. Osbelt has had an opportunity to conduct such review, the parties will be able to agree upon a mutually agreeable separation agreement.

In that regard, Ms. Osbelt hereby gives reasonable notice under Section 6.5 of the NEWN Operating Agreement as well as Section 4.6 of the TCLE Operating Agreement that she is invoking her rights to inspect and copy the complete books and records of each of these entities. She would like to do so next Monday, May 21 at 10 a.m. at the offices of NEWN and TCLE in Magalia, California. Ms. Osbelt intends to bring a copy service with her to facilitate the copying. Please advise forthwith whether this date and time is convenient or suggest an alternative date and time during the week of May 21.

BERGESON, LLP

E. Thom Rumberger, Esq.

May 17, 2007

Page 2

Please be advised that Ms. Osbelt disputes the propriety of the McDonalds' invocation of Section 3.1 of the NEWN Operating Agreement to require her to make a capital contribution of \$66,104.88 on or before May 23, 2007. It has been, and remains, her position that such action is invalid given that current incorrect and incomplete information provided to Ms. Osbelt regarding NEWN's financial situation and the balance of her capital account.

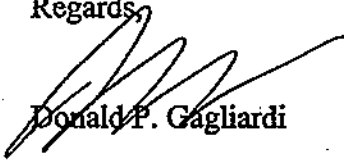
Ms. Osbelt is concerned that the McDonalds may have breached the Agreement with, and their fiduciary to, Ms. Osbelt in numerous respects, including, but not limited to, thus far denying her access to NEWN's financial records; refusing to provide her with details concerning NEWN's loans; excluding her from any management of NEWN; and providing incorrect information to NEWN's accountants which has in turn caused the accountants to prepare and file incorrect financial statements and tax returns. In addition, the McDonalds' actions have exposed Ms. Osbelt to potential personal liability to the IRS and NEWN's creditor, U.S. Bank.

We would be grateful if you would consult your clients as to their willingness to resolve the present situation as amicably as possible, and provide Ms. Osbelt with access the books and records of NEWN and of TCLE as requested herein.

The foregoing does not constitute, and should not be construed as, a waiver by Ms. Osbelt of any of her rights and remedies under the various agreements, which rights and remedies are hereby expressly reserved. While Ms. Osbelt would prefer to extricate herself from her relationship with the McDonalds without resort to litigation, she will take whatever steps are necessary to protect her rights, interests and reputation.

We look forward to hearing from you as soon as possible.

Regards,



Donald P. Gagliardi

BERGESON, LLP
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TELEPHONE (408) 291-6200
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WWW.BE-LAW.COM

May 21, 2007

Via Facsimile & U.S. Mail

E. Thom Rumberger, Esq.
Greenberg Traurig
1900 University Avenue, 5th Floor
East Palo Alto, CA 94303

Re: **NEWN, LLC and TCLE, LLC**

Dear Todd:

At your request, my colleague, Marc van Niekerk, and I came to your offices on Friday 18, 2007 to meet with you and Fred Adam. At that meeting, you indicated that your clients, the McDonalds, wanted to resolve the issues with Ms. Osbelt as a matter of urgency. In fact, you stated that their goal was to have an agreement for terminating their business relationship in place by Friday, May 25, and that they would make a proposal for buying out Ms. Osbelt's interests in NEWN and TCLE and that they would provide her with all necessary documentation for her to evaluate the proposal and assess her interest in the two limited liability companies. It is therefore curious that we have received no response to my e-mail to Mr. Adam, copied to you, sent Friday afternoon confirming that our client requires, as she has previously discussed with Dave McDonald and she has previously been promised, that NEWN's and TCLE's tax returns be amended to reflect the correct allocation of income among members and that she be allowed to review the draft amendments before they are filed.

Further, at our meeting at your offices on Friday morning, May 18, we informed you that Ms. Osbelt required documentary support for the \$260,000 loan from US Bank. Although you undertook to obtain this and provide it to us, you have not done so.

It is apparent from the foregoing and the letter from your colleague, William Goines, sent after business hours on the evening of Friday, May 18, that the McDonalds have no intention of conducting a negotiation in good faith but are intent on continuing to prevent Ms. Osbelt from exercising her rights under the operating agreements between her and the McDonalds.

Moreover, apart from receiving one copy of QuickBooks records, we have heard nothing from you regarding scheduling our client's inspection of NEWN's and TCLE's

ANTHONY M. GLASSMAN
BEVERLY HILLS, CA 90210

AFFILIATED COUNSEL:
BERGESON & CAMPBELL
WASHINGTON, D.C. 20005

MARK E. FOSTER
SAN JOSE, CA 95110

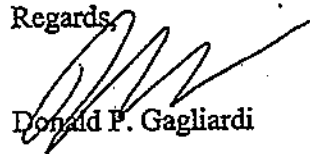
BERGESON, LLP

E. Thom Rumberger, Esq.
May 21, 2007
Page 2

financial books and records. Our client has repeatedly requested access to the books and records, including in an e-mail dated April 20, 2007, and we re-iterated the request to you in our letter of May 17, 2007.

Please regard this letter as the final request by Ms. Osbelt for a full inspection of the complete books and records of NEWN and TCLE. She will be attending the offices of NEWN and TCLE in Magalia, California at 10 a.m. on Thursday, May 24, 2007 to review and copy the complete books and records of NEWN and TCLE. In the event that your client does not allow full access to such books and records, we have been instructed to move for an appropriate court order compelling such access.

Regards,



Donald P. Gagliardi

-----Original Message-----

From: AdamF@gtlaw.com [mailto:AdamF@gtlaw.com]

Sent: Tuesday, May 22, 2007 11:33 AM

To: Donald P Gagliardi; Marc van Niekerk

Cc: RumbergerT@gtlaw.com; Gail C. Simmons; Virginia Ross; goinesw@gtlaw.com; TognoliniL@gtlaw.com

Subject: RE: NEWN - Data Files

Don,

I am in receipt of your correspondence dated May 21, 2007. I advise you as follows:

1. The amended returns are in process;
2. As stated during our meeting, and as followed up on Friday afternoon via email, all data entries for the years in issue are reflected in Quickbooks, including the US Bank credit line inflow of funds from NEWN to TCLE, constituting the debt TCLE owes to NEWN, and can be ascertained therein--further, it is NEWN's assertion that such information and descriptions have been provided and that your client is, and has been, in possession of information responsive to these requests for some time; and
3. During our Friday meeting we had advised you that the Magalia location was not an option since the office is located in the home of NEWN's principal, but we offered a neutral location in the form of NEWN's accounting firm's offices (Matson Isom), we also expressed that we needed an express list of information that was being requested (in addition to the capital account and US bank info). You stated you would check with your client regarding Matson Isom an alternate location and the information request list. I was waiting for that information from you so I could work with our client to schedule time at the Matson Isom offices to present the requested records. Please advise.

Regards,

Fred

Fred Adam

Greenberg Traurig, LLP|Attorneys at Law|Silicon Valley Office|1900 University Avenue|5th Floor|East Palo Alto, CA 94303 Telephone Direct 650.289.7880|Fax 650.462.7880|adamf@gtlaw.com

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BERGESON, LLP
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SAN JOSE, CALIFORNIA 95110
TELEPHONE (408) 291-6200
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May 22, 2007

Via Facsimile

Fred Adam, Esq.
Greenberg Traurig
1900 University Avenue, 5th Floor
East Palo Alto, CA 94303

Re: NEWN, LLC and TCLE, LLC

Dear Fred:

This responds to your e-mail of earlier today.

We note that you say that the amended returns are "in process." Until your firm became involved, NEWN's accountants had agreed, after many weeks of requests by Ms. Osbelt, to provide amended draft returns by last Friday, May 18th. You informed us that when you became involved, you advised your clients to have the process suspended. Inasmuch as you told us that you had only been retained by the McDonalds on or about May 16th, we cannot understand the present delay. Please provide us with a date certain by which the amended returns will be completed.

Our client is entitled to, and has repeatedly requested, access to the financial books and records of NEWN and TCLE. Given the way in which this matter is proceeding and the distance that our client will have to travel to conduct the inspection, we do not propose to limit the review to any specific documents.

Moreover, we have repeatedly advised you that QuickBooks data entries in no way satisfy our client's right to inspection of NEWN's and TCLE's financial books and records. Our client requires, and is entitled to, access to the source documents from which the data is compiled. This would include, but is not limited to:

- 1) The last three years of check registers, cancelled checks, and transactional history for all NEWN's banking accounts in the form of banking statements, or online banking printouts;

BERGESON, LLP
Fred Adam, Esq.
May 22, 2007
Page 2

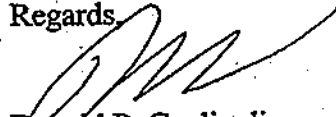
- 2.) The last three years of check registers, cancelled checks, and transactional history for all TCLE's banking accounts in the form of banking statements, or online banking printouts;
- 3.) All information and documents pertaining to NEWN's 401K and Profit Sharing Plans, including all distribution amounts and transactional history, and especially the correspondence to the investment firm requesting Ms. Osbelt's removal as Trustee;
- 4.) The transactional history for all McDonald "loans" to the company, including cancelled checks, wire transfers, banking statements, and any and all documentary proof any amounts the McDonald's contend that they advanced to NEWN and/or TCLE.
- 5.) All TCLE Line of Credit statements from US Bank;
- 6.) All of the correspondence from US Bank to the McDonalds concerning the Line of Credit defaults;
- 7.) The last three years of US BANK credit card expenses; and
- 8.) The last three years of expense reports for the McDonalds, and copies of documents reflecting reimbursement thereof.

Your clients elected to run the business, of which Ms. Osbelt is part owner, from their home. Any resulting discomfort that the McDonalds might experience because of this choice is a problem of their own making. It is certainly not impossible for the inspection to take place there as you seem to suggest. We have no doubt that any production which takes place at a place other than where the books and records are normally kept, will be incomplete, and must accordingly advise you will not be agreed to.

As I notified you in my letter of May 21, Ms. Osbelt, will be attending the offices of NEWN and TCLE in Magalia, California at 10 a.m. on Thursday, May 24, 2007 to review and copy the complete books and records of NEWN and TCLE. Please advise us whether we need to involve the court in order to enforce or client's rights.

We look forward to hearing from you as soon as possible.

Regards,



Donald P. Gagliardi

Marc van Niekerk

From: AdamF@gtlaw.com
Sent: Wednesday, May 23, 2007 6:40 PM
To: Marc van Niekerk
Subject: RE: NEWN

Hope to get you a response to document request later tonight. pulling together the relevant facts. regards,

Fred Adam

Greenberg Traurig, LLP|Attorneys at Law|Silicon Valley Office|1900 University Avenue|5th
Floor|East Palo Alto, CA 94303
Telephone Direct 650.289.7880|Fax 650.462.7880|adamf@gtlaw.com

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Marc van Niekerk

From: Marc van Niekerk
Sent: Wednesday, May 23, 2007 8:06 PM
To: AdamF@gtlaw.com
Cc: Donald P Gagliardi; Virginia Ross
Subject: NEWN
Importance: High

Fred:

We have still not received confirmation from you that our client will have access to the books and records tomorrow. Please let me know by return so that our client does not travel all the way to Magalia in only to be refused access.

Marc

Marc G. van Niekerk, Esq.
Bergeson, LLP
303 Almaden Blvd
Suite 500
San Jose, CA 95110
Telephone: 408 291-6200 Main
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6/5/2007

Marc van Niekerk

From: AdamF@gtlaw.com
Sent: Wednesday, May 23, 2007 8:12 PM
To: Marc van Niekerk
Cc: Donald P Gagliardi; Virginia Ross; RumbergerT@gtlaw.com
Subject: Re: NEWN

I am on blackberry and our system has been down thus hampering getting out the response. I'll send a more detailed response later tonight, but tomorrow won't work due to too short notice for scheduling, but we are trying to schedule early Friday. Please have your clients pencil in early Friday.

Fred Adam
Greenberg Traurig LLP
Silicon Valley Office
Ph: 650 289-7880
Fax: 650 462-7880
Cell: 415 846-7992

----- Original Message -----

From: Marc van Niekerk <mvanniekerk@be-law.com>
To: Adam, Fred (Shld-SV-TX/T&E)
Cc: Donald P Gagliardi <dgagliardi@be-law.com>; Virginia Ross <VRoss@be-law.com>
Sent: Wed May 23 20:06:01 2007
Subject: NEWN

Fred:
We have still not received confirmation from you that our client will have access to the books and records tomorrow. Please let me know by return so that our client does not travel all the way to Magalia in only to be refused access.

Marc

Marc G. van Niekerk, Esq.
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Facsimile: 408 297-6000

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Greenberg Traurig

May 24, 2007.

VIA ELECTRONIC MAIL AND FACSIMILE

Donald P. Gagliardi, Esq.
BERGESON, LLP
Attorneys At Law
303 Almaden Boulevard, Suite 500
San Jose, California 95110-2712
Email: dgagliardi@be-law.com

Re: NEWN, LLC and TCLE, LLC

Dear Mr. Gagliardi:

We are in receipt of your letter dated May 22, 2007 regarding the request by your client, Jennifer Osbelt, to inspect the financial books and records of NEWN, LLC ("NEWN") and Technology CLE, LLC ("TCLE," and collectively, the "Companies" or "our client").

You requested a date certain by which the amended returns will be completed. Our client anticipate and are working with Matson-Isom, the companies' CPA, diligently to try to complete the amended returns by Friday, May 25, 2007.

We respond to each of your specific requests for source documents as follows:

1. Check registers, cancelled checks and transactional history for NEWN.

As our client has clearly communicated to your client on several occasions in the past, NEWN's check registers are maintained solely in QuickBooks.

Canceled checks must be obtained from US Bank. NEWN is not required under the operating agreement or applicable law to bear the cost of obtaining copies of the checks from the bank; such expense is for your client to incur if she chooses. Our client has, however, contacted US Bank on your client's behalf in respect of this request, and has been informed that US Bank charges \$6.00 per statement and \$2.00 per check. We understand that the bank's standard procedure is to send a confirming letter after the request is made and before the bank begins the scanning process. We have been informed that it takes about two weeks to obtain the documents.

According to our client's best calculations, obtaining all canceled checks and statements from January 1, 2004 through May 1, 2007 would cost approximately \$7,312 (approximately 41 statements @ \$6 per statement = \$246.00; approximately 3,533 checks @ \$2 per check = \$7,066.00).

ALBANY
AMSTERDAM
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BOSTON
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DENVER
FORT LAUDERDALE
LOS ANGELES
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TYSONS CORNER
WASHINGTON, D.C.
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WILMINGTON
ZURICH

May 24, 2007

Page 2

Perhaps if your client can provide more specific information as to what checks and statements you are seeking (based presumably upon her review of the Quickbooks files she has), that may reduce her costs.

Regarding "transactional history," please advise as to what specific information your client is seeking in addition to the check registers and canceled checks. Otherwise, as our client has stated in the past numerous times, the transactional history reflected in Quickbooks is the most thorough and complete history that the company has and can provide.

2. Check registers, cancelled checks and transactional history for TCLE.

This is a duplicate Question #1 in respect of TCLE, please see our response to #1 above as the answers are the same.

3. NEWN's 401(k) and profit sharing plans

As a trustee of the NEWN 401(k) plan, Ms Osbelt has had full access to, and has been fully provided, the requested information.

4. Canceled checks, wire transfers and banking statements for McDonald loans

The requested information was provided to Ms. Osbelt on 3/25/07 at 10:11 p.m. in a detailed eight-page accounting report.

5. TCLE line of credit statements

TCLE has no line of credit.

6. Correspondence re: line of credit defaults

Ms. Osbelt was a signatory on the original and first renewal of the NEWN line of credit with US Bank and has been provided previously with copies of the requested correspondence.

7. Last three years of US Bank credit card expenses

Our client is in the process of gathering and scanning this information, however, again, we understand that the full detail of these transactions appear in the Quickbook records provided previously.

May 24, 2007
Page 3

8. Last three years of expense reports for the McDonalds

Our client is in the process of gathering and scanning this information. Additionally and as part of the review of expense reports, NEWN is reviewing and auditing the expense reports of all members, including those submitted by Ms. Osbelt. Your client should be aware that the company's and its CPA's review of these reports and resulting reimbursements to date has revealed serious discrepancies and abuses in her requests for reimbursements; specifically, she submitted duplicate and even triplicate expense requests that were paid in good faith by the company, resulting in her actually profiting from what should have been just reimbursement.

You informed us that your client intends to appear at the offices of NEWN and TCLE on May 24, 2007 at 10:00 a.m., which happens to currently be the personal residence of the McDonalds. As you were informed by me via e-mail on May 23, 2007, May 24 at 10:00 am was not possible due to scheduling issues. Also, due to the current situs of the company's offices and the deterioration in the relationship between Ms. Osbelt and the McDonalds, our client has attempted to be responsive to Ms. Osbelt's specific requests for documents and has provided the same. As it is our client's sincere belief that the records and other materials either provided by our client to date, or already in Ms Osbelt's possession, comply with your client's document request, our client can only conclude that Ms. Osbelt's purpose for a visit to their home is directed more to harass and delay, than to actually obtaining further information that relates to her interest as a member of NEWN and TCLE. As such, we have been directed to inform you that unless we have received executed signature pages to the Settlement Agreement and Release of Claims, the Repurchase Agreement, and the exhibits attached thereto by 10:30AM, tomorrow, Friday, May 25, 2007, then our client's offer of settlement contained therein will be withdrawn. The amended and corrected return and 1099 filing information are to be filed Friday afternoon as well.

If you have any questions, please do not hesitate to contact me at (650) 289-7880. Please direct any and all responses to this correspondence to William Goines in our offices.

Very truly yours,



FREDERIC J. ADAM, ESQ.

cc: David McDonald
William Goines
Todd Rumberger

BERGESON, LLP
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May 25, 2007

Via Email

William Goines, Esq.
Greenberg Traurig
1900 University Avenue, 5th Floor
East Palo Alto, CA 94303

Re: NEWN, LLC and TCLE, LLC

Dear Mr. Goines:

This responds to your Fred Adam's letter of May 24, 2007 in which he requested that any response be addressed to you.

In the first instance, please confirm that the amended returns will not be filed until Ms. Osbelt has had an opportunity to review them, as has been repeatedly requested and agreed to.

Secondly, it is apparent from your responses to our requests for access to financial books and records that your clients are providing you with incorrect information.

1. Cancelled Checks and Bank Statements

US Bank provides NEWN and TCLE with online access to the account, including the facility to view and print statements and cancelled checks at no cost. As a co-owner of NEWN, Ms. Osbelt is entitled to access to the account. In addition, the bank provides NEWN with monthly hardcopy statements. If your clients remain unwilling to provide us with the records requested, please provide us with the on-line password so that our client may obtain them herself directly from the bank.

2. NEWN's 401(k) and profit sharing plans

Your clients wrongfully and, without notice to our client, removed her as trustee of the plan in Mid-April. Please provide the requested information.

ANTHONY M. GLASSMAN
BEVERLY HILLS, CA 90210

AFFILIATED COUNSEL:
BERGESON & CAMPBELL
WASHINGTON, D.C. 20005

MARK E. FOSTER
SAN JOSE, CA 95110

BERGESON, LLP

William Goines, Esq.
May 25, 2007
Page 2

3. Canceled checks, wire transfer and banking statements for McDonald loans

The "detailed eight-page accounting report" referred to by Mr. Adam did not contain a single source document. Please provide the requested source documents, not tables prepared by Mr. McDonald.

4. TCLE Line of Credit Statements

Mr. McDonald has consistently referred to the line of credit with US Bank as the "TCLE Line of Credit". See, for instance, the 2007 Business Plan prepared by McDonald. In fact, the purpose of the line of credit was to fund the start-up of TCLE. Please provide the requested information.

5. Correspondence re: Line of Credit Default

Our client denies that she has been provided with all notices of default sent to your clients. If you have evidence to the contrary, please provide it. US Bank has advised Ms. Osbelt that the McDonalds were being sent default notices and LOC renewal notices for some time prior to the deadline on April 4th. The first notice Ms. Osbelt received was on April 18th, 2007. Please provide the requested information.

Mr. Adam's letter also contains an allegation that our client submitted false expense reports to NEWN. Our client views this allegation as defamatory and expressly reserves her right to respond at an appropriate time. Ms. Osbelt furthermore reserves her right to take the appropriate action against your clients. We have also been advised that Mr. McDonald is contacting NEWN clients and advising them that Ms. Osbelt has left NEWN "to have babies." Kindly advise your client to immediately cease disseminating false information. Our client's rights in this regard are similarly reserved.

Finally, and to the extent that the demand warrants mention, our client has no intention of signing the incomplete draft documents that you provided to us by e-mail on March 23, 2007.

We look forward to hearing from you as soon as possible.

Sincerely,


Marc G. van Niekerk

Greenberg Traurig

William J. Goines
Tel 650.280.7880
Fax 650.462.7880
wgoines@gtlaw.com

May 30, 2007

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

Marc G. van Nickerk, Esq.
BERGESON, LLP
Attorneys At Law
303 Almaden Boulevard, Suite 500
San Jose, California 95110-2712

Re: NEWN, LLC and TCLE, LLC

Dear van Nickerk:

We are in receipt of your letter dated May 25, 2007 regarding the request by your client, Jennifer Osbelt, to inspect the financial books and records of NEWN, LLC ("NEWN") and Technology CLE, LLC ("TCLE," and collectively, the "Companies" or "our client").

Please provide us with a list of available dates in the next two to three weeks when Ms. Osbelt's accountant would be available to meet at Matson-Isom in Chico, California. We will need to coordinate Ms. Osbelt's schedule along with the schedules of the tax and bookkeeping CPA's so the more days Ms. Osbelt can provide the easier it should be to schedule a date. We anticipate starting at 9:00 a.m. to accommodate Ms. Osbelt's questions. Please be advised that Ms. Osbelt will be charged for Matson-Isom time, facilities, copying costs, as well as time spent by the CPA, LeAnn Andrews. Donna and possibly David McDonald will attend the review, and the proceedings will be recorded.

The following is a response to each of your specific requests for source documents:

1. Check registers, cancelled checks and transactional history for NEWN.

Paragraph 6.5 of the Operating Agreement permits Ms. Osbelt to view company records at her expense, but does not allow her online access to NEWN's US Bank account. As set forth in our letter of May 24, 2007, our client has contacted US Bank to assist Ms. Osbelt in ordering these records and provided you with an estimate of costs.

ALBANY
AMSTERDAM
ATLANTA
BOCA RATON
BOSTON
CHICAGO
DALLAS
DENVER
FORT LAUDERDALE
LOS ANGELES
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May 30, 2007

Page 2

Again, if Ms. Osbelt has specific information as to what checks and statements she is seeking based upon her review of the Quickbooks files, that may reduce her costs.

We note that your letter did not provide the requested clarification of the term "transactional history". Please advise as to what specific information, if any, your client is seeking in addition to the check registers and canceled checks.

2. NEWN's 401(k) and profit sharing plans

While she was a trustee Ms. Osbelt had full access to, and has been fully provided, the requested information. If she would like another copy of the 401(k) documentation she should direct her request to the plan administrator, Bidwell Consulting.

3. Canceled checks, wire transfers and banking statements for McDonald loans

The eight-page accounting report provided to Ms. Osbelt on 3/25/07 at 10:11 p.m. sufficiently fulfills Ms. Osbelt's request.

4. TCLE line of credit statements

TCLE has no line of credit with US Bank. The line of credit referenced in the 2007 Business Plan was with NEWN, who wrote checks to TCLE and now owes NEWN \$360,000.

5. Correspondence re: line of credit defaults

US Bank default correspondence was provided to Ms. Osbelt as email attachments on 5/8/2007 to Chris Rodi, Esq.

6. Expense Reports

Our client has been auditing expense reports and has come across numerous examples of duplicate expense requests submitted by Ms. Osbelt. We are in the process of determining whether this is a result of careless accounting or if it indicates a pattern of defrauding the company.

7. Departure Description

NEWN is open to hearing Ms. Osbelt's suggestions for how to describe her departure to consultants and clients.

May 30, 2007
Page 3

8. Amended Tax Returns

The Articles of Organization do not grant minority members the right to review and/or comment on tax reporting. Ms. Osbelt received the revised bookkeeping records that provided her with the taxable income statements in Quickbooks.

If you have any questions, please do not hesitate to contact me at (650) 289-7860.

Very truly yours,



William J. Goines, Esq.



SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

DAVID D. MCDONALD, DONNA K. MCDONALD, and DOES 1-10,
inclusive

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

JENNIFER OSBELT

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ENDORSED FILED
SAN MATEO COUNTY

JUN 5 2007

Clerk of the Superior Court

By A. De Leon
DEPUTY CLERK

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court State of California
400 County Center
Second Floor
Redwood City, CA 94063

CASE NUMBER **CV 463528**
(Número del Caso)

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Donald P. Gagliardi, Esq.
Marc G. van Niekerk, Esq.
Bergeson, LLP, 303 Almaden Blvd., Suite 500
San Jose, CA 95110-2712

408-291-6200

A. De LEON

DATE: June 5, 2007
(Fecha) **JUN 5 2007**

JOHN C. FITTON

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

[SEAL]

POS-015

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Donald P. Gagliardi, Bar No. 138979 Marc G. van Niekerk, Bar No. 201329 Bergeson, LLP 303 Almaden Blvd., Suite 500 San Jose, CA 95110-2712 TELEPHONE NO.: 408-291-6200 FAX NO. (Optional): 408-297-6000 E-MAIL ADDRESS (Optional): mvanniekerk@be-law.com ATTORNEY FOR (Name): Plaintiff	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Mateo STREET ADDRESS: 400 County Center MAILING ADDRESS: CITY AND ZIP CODE: Redwood City, CA 94063 BRANCH NAME:	
PLAINTIFF/PETITIONER: Jennifer Osbelt DEFENDANT/RESPONDENT: David D. McDonald, Donna K. McDonald, and Does 1-10, inclusive,	
NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL	CASE NUMBER: CIV463528

TO (Insert name of party being served): David D. McDonald and Donna K. McDonald, Defendants

NOTICE

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: June 7, 2007

Marc G. van Niekerk

(TYPE OR PRINT NAME)

(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of (to be completed by sender before mailing):

1. ☒ A copy of the summons and of the complaint.
2. ☒ Other (specify): Civil Case Cover Sheet; Notice of Case Management Conference with attached Case Management Statement and ADR Information Sheet.

(To be completed by recipient):

Date this form is signed: June 19, 2007

William J. Gonsky

(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY,
ON WHOSE BEHALF THIS FORM IS SIGNED)

(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF
ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

Any. For David D. McDonald & Donna K. McDonald

MC-050

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): JOSEPH W. COTCHETT/#36324/ARA R. JABAGCHOURIAN/#205777 COTCHETT, PITRE & MCCARTHY 840 MALCOLM ROAD, SUITE 200 BURLINGAME, CA 94010 TELEPHONE NO.: (650) 697-6000 FAX NO. (Optional): (650) 697-0577 E-MAIL ADDRESS (Optional): jcotchett@cpmllegal.com ATTORNEY FOR (Name): PLAINTIFF JENNIFER OSBELT</p>	<p>FOR COURT USE ONLY</p> <p>ENDORSED FILED SAN MATEO COUNTY JUL 11 2007 Clerk of the Superior Court By <u>E. Boffi</u> DEPUTY CLERK</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO STREET ADDRESS: 400 COUNTY CENTER MAILING ADDRESS: CITY AND ZIP CODE: REDWOOD CITY, CA 94063 BRANCH NAME: CASE NAME: OSBELT v. McDONALD, ET AL.</p>	<p>CASE NUMBER: CIV 463528</p>
<p>SUBSTITUTION OF ATTORNEY—CIVIL (Without Court Order)</p>	

THE COURT AND ALL PARTIES ARE NOTIFIED THAT (name): **PLAINTIFF JENNIFER OSBELT** makes the following substitution:

1. Former legal representative ☐ Party represented self ☒ Attorney (name): **DONALD P. GAGLIARDI**
2. New legal representative ☐ Party is representing self* ☒ Attorney s
 - a. Name: **JOSEPH W. COTCHETT**
 - b. State Bar No. (if applicable): **36324**
 - c. Address (number, street, city, ZIP, and law firm name, if applicable): **COTCHETT, PITRE & MCCARTHY; 840 MALCOLM ROAD, SUITE 200, BURLINGAME, CA 94010**
 - d. Telephone No. (include area code): **(650) 697-6000**
3. The party making this substitution is a ☒ plaintiff ☐ defendant ☐ petitioner ☐ respondent ☐ other (specify):

***NOTICE TO PARTIES APPLYING TO REPRESENT THEMSELVES**

- | | | |
|--|---|---|
| <ul style="list-style-type: none"> • Guardian • Conservator • Trustee | <ul style="list-style-type: none"> • Personal Representative • Probate fiduciary • Corporation | <ul style="list-style-type: none"> • Guardian ad litem • Unincorporated association |
|--|---|---|

If you are applying as one of the parties on this list, you may NOT act as your own attorney in most cases. Use this form to substitute one attorney for another attorney. SEEK LEGAL ADVICE BEFORE APPLYING TO REPRESENT YOURSELF.

NOTICE TO PARTIES WITHOUT ATTORNEYS

A party representing himself or herself may wish to seek legal assistance. Failure to take timely and appropriate action in this case may result in serious legal consequences.

4. I consent to this substitution.

Date: JULY 11, 2007

JENNIFER OSBELT

(TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY)

5. ☒ I consent to this substitution.

Date: JULY 9, 2007

DONALD P. GAGLIARDI

(TYPE OR PRINT NAME)

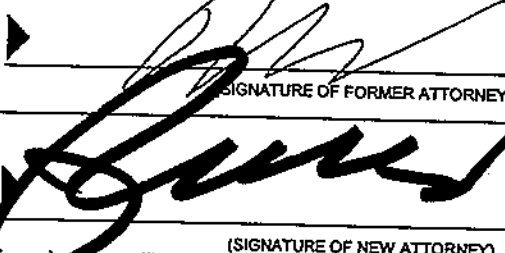

 (SIGNATURE OF FORMER ATTORNEY)

6. ☒ I consent to this substitution.

Date: JULY 11, 2007

JOSEPH W. COTCHETT

(TYPE OR PRINT NAME)


 (SIGNATURE OF NEW ATTORNEY)

(See reverse for proof of service by mail)

CASE NAME: OSBELT V. McDONALD, ET AL.

CASE NUMBER:
CIV 463528**PROOF OF SERVICE BY MAIL
Substitution of Attorney—Civil**

Instructions: After having all parties served by mail with the Substitution of Attorney—Civil, have the person who mailed the document complete this Proof of Service by Mail. An unsigned copy of the Proof of Service by Mail should be completed and served with the document. Give the Substitution of Attorney—Civil and the completed Proof of Service by Mail to the clerk for filing. If you are representing yourself, someone else must mail these papers and sign the Proof of Service by Mail.

1. I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred. My residence or business address is (specify): 840 MALCOLM ROAD, SUITE 200, BURLINGAME, CA 94010
2. I served the Substitution of Attorney—Civil by enclosing a true copy in a sealed envelope addressed to each person whose name and address is shown below and depositing the envelope in the United States mail with the postage fully prepaid.

(1) Date of mailing: JULY 11, 2007

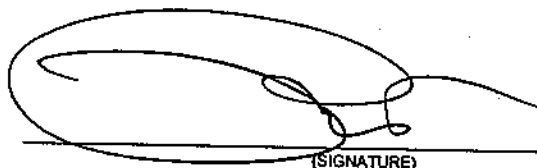
(2) Place of mailing (city and state): BURLINGAME, CA

3. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: JULY 11, 2007

PHYLLIS LEE

(TYPE OR PRINT NAME)



(SIGNATURE)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

4. a. Name of person served: DONALD P. GAGLIARDI
- b. Address (number, street, city, and ZIP): BERGESON, LLP, 303 ALMADEN BOULEVARD, SUITE 500, SAN JOSE, CA 95110
- c. Name of person served: WILLIAM GOINES
- d. Address (number, street, city, and ZIP): GREENBERG TRAURIG, 1900 UNIVERSITY AVENUE, 5TH FLOOR, EAST PALO ALTO, CA 94303
- e. Name of person served:
- f. Address (number, street, city, and ZIP):
- g. Name of person served:
- h. Address (number, street, city, and ZIP):
- i. Name of person served:
- j. Address (number, street, city, and ZIP):

☐ List of names and addresses continued in attachment.

1 WILLIAM J. GOINES (SBN 61290)
2 KAREN ROSENTHAL (SBN 209419)
3 CINDY HAMILTON (SBN 217951)
4 GREENBERG TRAUIG, LLP
5 1900 University Avenue, Fifth Floor
6 East Palo Alto, California 94303
7 Telephone: (650) 328-8500
8 Facsimile: (650) 328-8508

9 Attorneys for Defendants
10 David D. McDonald and Donna K. McDonald

ENDORSED FILED
SAN MATEO COUNTY

JUL 18 2007

Clerk of the Superior Court
By M. YOUNG
DEPUTY CLERK

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO

BY FAX

JENNIFER OSBELT,

Plaintiff(s);

v.

DAVID D. McDONALD, DONNA K.
McDONALD, and DOES 1-10, inclusive,

Defendant(s).

Case No. CIV 463528

**ANSWER OF DAVID MCDONALD AND
DONNA MCDONALD TO COMPLAINT**

(Date Action Filed: June 5, 2007)

AND RELATED CROSS-CLAIMS

Defendants David McDonald and Donna McDonald (collectively, "Defendant") hereby answer the Complaint For Breach of Contract, Breach of Fiduciary Duty, Accounting, Slander Per Se and Violations of the Beverly-Killea Limited Liability Company Act ("Complaint") filed by Plaintiff Jennifer Osbelt ("Plaintiff") as follows:

GENERAL DENIAL

Pursuant to California Code of Civil Procedure section 431.30(d), Defendant generally denies each and every allegation of the Complaint, the whole thereof, including each and every alleged cause of action contained therein, and further denies that Plaintiff is entitled to the relief requested or any relief at all, that Plaintiff sustained or will sustain damages in the sum or sums alleged, or any

1 other sum or sums, or at all; Defendant further denies that Plaintiff is entitled to attorneys' fees in the
 2 sum or sums alleged, or any other sum or sums, or at all.

3 **FIRST AFFIRMATIVE DEFENSE**

4 **[Failure to State a Cause of Action]**

5 1. As and for a first, separate and affirmative defense to the Complaint, and to each and
 6 every cause of action contained therein, Defendant alleges that Plaintiff's Complaint, and each of the
 7 purported causes of action contained therein, fails to state facts sufficient to constitute a cause or
 8 causes of action against Defendant.

9 **SECOND AFFIRMATIVE DEFENSE**

10 **[Statute of Limitations]**

11 2. As and for a further affirmative defense to the Complaint, and to each and every cause
 12 of action contained therein, Defendant alleges that the Complaint is barred by the statute of
 13 limitations set forth in California Code of Civil Procedure sections 335 through 349.4, including, but
 14 not limited to sections 337, 337(a), 337.1, 337.15, 337.2, 338.1, 339c, 339.5, 340(3), and 343; and
 15 sections 2607(3)(a), 2725(1) and (2) of the California Commercial Code.

16 **THIRD AFFIRMATIVE DEFENSE**

17 **[Comparative Fault or Negligence of Plaintiff]**

18 3. As and for a further affirmative defense to the Complaint, and to each and every cause
 19 of action contained therein, Defendant alleges that Plaintiff's injuries and damages, if any, are the
 20 direct and proximate result of Plaintiff's own fault or negligence and that, as a result, Plaintiff's claim
 21 is either barred or proportionately reduced.

22 **FOURTH AFFIRMATIVE DEFENSE**

23 **[Comparative Fault or Negligence of Others]**

24 4. As and for a further affirmative defense to the Complaint, and to each and every cause
 25 of action contained therein, Defendant alleges that the injuries sustained by Plaintiff, if any, were
 26 either wholly or in part negligently caused by persons, firms, corporations or entities other than
 27 Defendant and said fault or negligence is either imputed to Plaintiff by reason of the relationship of
 28 said persons, firms, corporations or entities other than this answering Defendant to Plaintiff and/or
 said fault or negligence comparatively reduces the percentage of negligence, if, any, by this
 answering Defendant.

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FIFTH AFFIRMATIVE DEFENSE

[Assumption of the Risk]

5. As and for a separate affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant alleges that Plaintiff acted with full knowledge of all the facts and circumstances surrounding Plaintiff's alleged injuries and thus assumed any and all risk of injury.

SIXTH AFFIRMATIVE DEFENSE

[Equitable Indemnity/Comparative Contribution]

6. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant alleges that in the event Defendant is held liable, this Defendant is entitled to a percentage contribution of the total liability from persons, firms, corporations or entities other than this answering Defendant in accordance with the principles of equitable indemnity and comparative contribution.

SEVENTH AFFIRMATIVE DEFENSE

[Negligence/Liability of Other Persons/Entities]

7. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant alleges that the charges alleged in the Complaint, if any, were caused by the negligence and liability of persons, firms, corporations or entities other than this answering Defendant.

EIGHTH AFFIRMATIVE DEFENSE

[Failure to Mitigate]

8. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant alleges that Plaintiff failed to mitigate the alleged damages, if any, which she claims to have sustained and recovery should be barred or diminished accordingly.

NINTH AFFIRMATIVE DEFENSE

[Willful Misconduct]

9. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant alleges that the alleged injuries or damages suffered by Plaintiff, if any, were the sole and proximate result of the willful misconduct of persons, firms, corporations or entities other than this answering Defendant.

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TENTH AFFIRMATIVE DEFENSE

[In Pari Delicto]

10. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant alleges the affirmative defense of *in pari delicto*.

ELEVENTH AFFIRMATIVE DEFENSE

[Obligation Extinguished by Performance]

11. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant alleges that the Complaint, and each and every cause of action contained therein, is barred by the provisions of California Civil Code section 1473.

TWELFTH AFFIRMATIVE DEFENSE

[Superseding Independent Intervening Proximate Cause]

12. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant alleges that no act or omission on its part was a substantial factor in bringing about the alleged damages to Plaintiff, nor was any act or omission on the part of Defendant a contributing cause of the alleged damages suffered by Plaintiff and any alleged acts or omissions of Defendant were superseded by the alleged acts or omissions of other persons, firms, corporations or entities, including Plaintiff, which were the independent, intervening, and proximate cause of any injuries or damages sustained by Plaintiff.

THIRTEENTH AFFIRMATIVE DEFENSE

[Failure to Perform Conditions, Covenants and Promises]

13. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant alleges that Plaintiff has failed to perform all conditions, covenants and promises required by her to be performed in accordance with the terms and conditions of the written contract.

FOURTEENTH AFFIRMATIVE DEFENSE

[Failure/Lack of Consideration]

14. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant alleges that the Complaint is barred by a failure and/or lack of consideration, and no cause of action is stated.

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FIFTEENTH AFFIRMATIVE DEFENSE

[Mistake]

15. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant alleges that the Complaint is barred and no cause of action is stated because of mutual and/or unilateral mistake of the parties in entering into the contract, if any, described in the Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE

[Prevention]

16. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant alleges that it has fully performed the conditions and covenants required to be performed by it unless and until prevented from doing so by Plaintiff.

SEVENTEENTH AFFIRMATIVE DEFENSE

[Fraud/Intentional and/or Negligent Misrepresentation in the Execution of the Contract]

17. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant alleges that the Complaint is barred in that the execution of the contract, if any, was procured by unlawful and illegal acts including fraud, intentional and/or negligent misrepresentation.

EIGHTEENTH AFFIRMATIVE DEFENSE

[Statute of Frauds]

18. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant alleges that the Complaint is barred by the applicable statute of frauds, including, but not limited to, California Commercial Code section 2201 and California Civil Code section 1624, in that the alleged contract, if any, was not in writing and was for a price of more than \$500.00.

NINETEENTH AFFIRMATIVE DEFENSE

[Cancellation and/or Repudiation]

19. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant alleges that the Complaint is barred in that the contract, if any, was timely cancelled and/or repudiated by this answering Defendant.

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TWENTIETH AFFIRMATIVE DEFENSE**[Non-Occurrence of Condition Precedent]**

20. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant alleges that Plaintiff is not entitled to performance by Defendant, because a condition precedent to Defendant's duty to perform has not yet occurred.

TWENTY-FIRST AFFIRMATIVE DEFENSE**[Conduct of Others]**

21. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant alleges that if Plaintiff sustained damages, which this answering Defendant expressly denies, then those damages were caused by persons other than this answering Defendant and for which this answering Defendant is not responsible.

TWENTY-SECOND AFFIRMATIVE DEFENSE**[Waiver]**

22. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant alleges that if Plaintiff sustained damages, which this answering Defendant expressly denies, then Plaintiff is barred by the doctrine of waiver from recovering those damages from this answering Defendant.

TWENTY-THIRD AFFIRMATIVE DEFENSE**[Estoppel]**

23. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant alleges that if Plaintiff sustained damages, which Defendant expressly denies, then Plaintiff is barred by the doctrine of estoppel from recovering those damages from Defendant.

TWENTY-FOURTH AFFIRMATIVE DEFENSE**[Unclean Hands]**

24. As and for a further affirmative defense to the Complaint and to each and every cause of action contained therein, Defendant alleges that Plaintiff is barred from seeking equitable relief by the doctrine of unclean hands by virtue of Plaintiff's own conduct.

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TWENTY-FIFTH AFFIRMATIVE DEFENSE

[Failure To Join Necessary Parties]

25. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant alleges Plaintiff has failed to join all necessary parties as is required by California Code of Civil Procedure section 389.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

[Lack of Causation]

26. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant alleges that Plaintiff's damages, if any, were not actually or proximately caused by any acts, conduct, or omissions of Defendant.

WHEREFORE, Defendants pray for judgment as follows:

1. That Plaintiff take nothing by reason of her Complaint;
2. For costs of suit incurred herein;
3. For reasonable attorneys' fees; and
4. For such other relief as the court deems just and proper.

Dated: July 18, 2007.

GREENBERG TRAURIG, LLP

By: Cindy Hamilton
William J. Gojhes
Karen Rosenthal
Cindy Hamilton

Attorneys for Defendants and Cross-Complainants
David D. McDonald and Donna K. McDonald

Osbelt v. McDonald, et al.

Case No. CIV 463528

PROOF OF SERVICE

I, Cathy Sandifer, declare that I am a citizen of the United States, over the age of eighteen years and not a party to the within action. I am an employee of GREENBERG TRAURIG, LLP, and my business address is 1900 University Avenue, Fifth Floor, East Palo Alto, CA 94303. On July 18, 2007, I served the following documents:

ANSWER OF DAVID MCDONALD AND DONNA MCDONALD TO COMPLAINT

☐ by transmitting via **FACSIMILE** the document(s) listed above to the fax numbers) set forth below, or as stated on the attached service list, on this date at approximately _____, from the sending facsimile machine telephone number of 650-289-7893. The transmission was reported as complete and without error by the machine. Pursuant to California Rules of Court, Rule 2008(e)(4), I caused the machine to print a transmission record of the transmission, a copy of which is attached to the original of this declaration. The transmission report was properly issued by the transmitting facsimile machine.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the **UNITED STATES MAIL** at East Palo Alto, California, addressed as set forth below.

☐ by **OVERNIGHT MAIL** by placing the document(s) listed above in a sealed overnight mail envelope with postage thereon fully prepaid, addressed as set forth below.

☐ **(BY MESSENGER PERSONAL SERVICE)**. I caused delivery of such envelope by hand via courier service to the offices of the addressee.

Joseph W. Cotchett, Esq.
Cotchett, Pitre & McCarthy
840 Malcolm Rd., Ste. 200
Burlingame, CA 94010
Fax No. (650) 697-0577

I am readily familiar with the business practice of my place of employment in respect to the collection and processing of correspondence, pleadings and notices for mailing with United States Postal Service/Express Mail, Federal Express and other overnight mail services. The foregoing sealed envelope was placed for collection and mailing this date consistent with the ordinary business practice of my place of employment, so that it will be picked up this date with postage thereon fully prepaid at East Palo Alto, California, in the ordinary course of such business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 18, 2007, at East Palo Alto, California.


Cathy Sandifer

1 WILLIAM J. GOINES (SBN 61290)
2 KAREN ROSENTHAL (SBN 209419)
3 CINDY HAMILTON (SBN 217951)
4 GREENBERG TRAURIG, LLP
5 1900 University Avenue, Fifth Floor
6 East Palo Alto, California 94303
7 Telephone: (650) 328-8500
8 Facsimile: (650) 328-8508

9 Attorneys for Defendants
10 David D. McDonald and Donna K. McDonald

ENDORSED FILED
SAN MATEO COUNTY

JUL 18 2007

Clerk of the Superior Court
By M. YOUNG
DEPUTY CLERK

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN MATEO

13 JENNIFER OSBELT,

14 Plaintiff(s);

15 v.

16 DAVID D. McDONALD, DONNA K.
17 McDONALD, and DOES 1-10, inclusive,

18 Defendant(s).

Case No. CIV 463528

BY FAX

**CROSS-COMPLAINT FOR INTERFERENCE
WITH PROSPECTIVE ECONOMIC
ADVANTAGE, FRAUD, BREACH OF
FIDUCIARY DUTY, SLANDER PER SE AND
LIBEL PER SE**

(Date Action Filed: June 5, 2007)

19 DAVID D. McDONALD; DONNA K.
20 McDONALD; NATIONAL EXPERT
21 WITNESS NETWORK, a California Limited
22 Liability Company; TECHNOLOGY CLE, a
23 California Limited Liability Company,

24 Cross-Complainants,

25 v.

26 JENNIFER OSBELT, individually and doing
27 business as PALO ALTO TECHNICAL, and
28 ROES 1-10, inclusive,

Cross-Defendants.

29 Cross-Complainants National Expert Witness Network, LLC ("NEWN"), Technology CLE,
30 LLC ("TCLE"), David McDonald and Donna McDonald (the "McDonalds") (collectively, "Cross-
31 Complainants") allege as follows:

NATURE OF THE ACTION

1
2 1. This is an action for interference with prospective economic advantage, fraud, breach
3 of fiduciary duty, libel per se and slander per se arising from Cross-Defendant's ownership interest
4 and involvement in NEWN and TCLE, along with co-owners David McDonald and Donna
5 McDonald.

6 2. Cross-Defendant deliberately, and without the knowledge of Cross-Complainants,
7 submitted duplicative expense requests seeking reimbursement for company-related expenses which
8 where paid by Cross-Complainants. Cross-Defendant further has refused to assign her interest in
9 valuable patents to her co-inventors, former NEWN employee Alexis Villamil and Cross-
10 Complainant David McDonald. As a result of Cross-Defendants refusal to assign rights to these
11 patents, they stand to be abandoned, resulting in commercial and economic damages. Cross-
12 Defendant additionally breached her fiduciary duties by refusing to provide required documents
13 necessary to renew a NEWN line of credit with U.S. Bank, resulting in NEWN's default of the U.S.
14 Bank note.

JURISDICTION AND VENUE

15
16 3. This Court has jurisdiction over this action pursuant to California Code of Civil
17 Procedure ("CCP") § 410.10. Each of the Cross-Defendants resides within the state.

18 4. Venue is proper in this judicial district pursuant to CCP § 395 because part of the
19 events giving rise to this Complaint occurred in this county. The amount in controversy exceeds the
20 jurisdictional amount of this Court.

THE PARTIES

21
22 5. Cross-Complainant NEWN is a California Limited Liability Company founded in
23 2002 to provide clients with experts and consultants with decades of professional experience, deep
24 technical skills and expertise in high technology disciplines. The NEWN consultant database is
25 comprised of hundreds of experts that encompasses over 2300 areas of technical expertise. Over
26 45% of NEWN consultants hold Ph.D. degrees; nearly all have extensive litigation support
27 experience. NEWN's resourceful staff has an in-depth understanding of high technology issues and
28

1 the requirements of intellectual property litigation that enable an expedited identification of an
2 expert or consultant with the experience and expertise relevant to clients' requirements.

3 6. Cross-Complainant TCLE is a Limited Liability Company formed in California to
4 engage in lawful business activities within and without the State. The majority owners of TCLE are
5 David and Donna McDonald; David McDonald is also the President of TCLE.

6 7. Cross-Defendant Jennifer Osbelt ("Ms. Osbelt") is an individual residing in
7 Redwood City, California. Ms. Osbelt started working as a sub-contractor for NEWN in January
8 2004. She left NEWN effective April 30, 2007. Subsequent to April 2004 Ms. Osbelt performed
9 services for NEWN, in the capacity of Vice President and Chief Technical Officer.

10 8. Cross-Defendant Palo Alto Technical is a fictitious business name registered by Ms.
11 Osbelt in San Mateo County. Cross-Complainants are informed and believe that Ms. Osbelt
12 conducts business under the fictitious business name Palo Alto Technical.

13 9. The true names and/or capacities, whether individual, corporate, associate or
14 otherwise of Cross-Defendants ROES are unknown to Cross-Complainants at this time, who
15 therefore sue said Cross-Defendants by such fictitious names under Code Civ. Proc. Section 474.
16 When the true name and capacities of these Cross-Defendants have been ascertained, Cross-
17 Complainants will seek leave of this Court to amend this Cross-Complaint accordingly. Cross-
18 Complainants are informed and believe and thereon allege that at all times mentioned herein Cross-
19 Defendants, and each of them, are the agents, servants, employees and/or joint venturers of their co-
20 cross-defendants, and were acting within the scope, course and authority of that agency,
21 employment, corporate capacity and/or joint venture and that each and every Cross-Defendant
22 aforesaid, when acting as a principal, was negligent and reckless in selection and hiring of each and
23 every other Cross-Defendant as an agent, servant, employee, corporate officer, and/or joint venturer,
24 and that each and every Cross-Defendant ratified the acts of their co-cross-defendants.

25 BACKGROUND FACTS

26 10. NEWN has been in business since August 2002.

27 11. On or about May 13, 2004, Ms. Osbelt entered into an NEWN Operating Agreement
28 and Articles of Incorporation (the "Operating Agreement"). Pursuant to the Operating Agreement,

1 Ms. Osbelt was a 25% owner of NEWN and the McDonalds each owned 37.5% of NEWN. Due a
2 recent capital call on or about May 8, 2007 that went unanswered by Ms. Osbelt, her interest has
3 been reduced to 22.04%.

4 12. On or about April 19, 2005, Ms. Osbelt entered into a TCLE partnership agreement.
5 Pursuant to the TCLE partnership agreement, Ms. Osbelt has a 25% interest in TCLE.

6 A) Reimbursement Claims

7 13. During the course of her business activities, Ms. Osbelt would incur business related
8 expenses for both NEWN and TCLE and submit these expenses for reimbursement. Ms. Osbelt
9 instructed that checks to reimburse her for these expenses be made out in the name of Palo Alto
10 Technical. Expense reports submitted by Ms. Osbelt were submitted both in her name and in the
11 name of Palo Alto Technical.

12 14. A recent audit of the books and records revealed that Ms. Osbelt submitted
13 duplicative expense claims to both NEWN and TCLE for reimbursement. Cross-Complainants are
14 informed and believe that Ms. Osbelt incurred certain expenses only once, but would submit
15 duplicative expense claims to both NEWN and TCLE, resulting in Ms. Osbelt being reimbursed for
16 these expenses twice. Ms. Osbelt also submitted to NEWN for reimbursement certain expenses
17 which were not related to NEWN business but benefited Ms. Osbelt's company Palo Alto
18 Technical, and Ms. Osbelt personally.

19 15. Ms. Osbelt was provided a NEWN company credit card to use for company related
20 expenses. NEWN is aware of Ms. Osbelt's use of her company credit card for numerous charges
21 which were not related to NEWN or TCLE business interests, but were made by Ms. Osbelt to
22 benefit herself, her family and her company Palo Alto Technical.

23 16. Receipt originals were repeatedly requested by NEWN to verify the validity of Ms.
24 Osbelt's credit card charges and Cross-Complainants are informed and believe Ms. Osbelt's
25 continued refusal to provide the requested receipts is based on her continuing attempt to hide her
26 activities from NEWN.

27 17. For example, Ms. Osbelt used her NEWN company credit card on March 20, 2007 to
28 purchase a HP computer from Best Buy for an NEWN employee, Joanna. This charge appeared on

1 her US Bank issued company credit card. Ms. Osbelt then attempted to personally profit by
2 submitted an expense report dated April 20, 2007 requesting she be reimbursed for the purchase
3 price of the HP computer which she had charged to her NEWN company credit card.

4 18. These fraudulent activities by Ms. Osbelt have resulted in damage to Cross-
5 Complainants.

6 B) Patent Assignment Claims

7 19. During the course of their business activities, David McDonald and Ms. Osbelt,
8 along with former NEWN employee Alex Villamil, created and developed unique, custom
9 computer training programs for use by TCLE at an expense of approximately \$500,000.

10 20. Mr. McDonald, Ms. Osbelt and Mr. Villamil submitted patent applications to the
11 United States Patent and Trademark Office on these computer programs, and are listed on the
12 application as co-inventors.

13 21. If these patent applications are granted by the USPTO, they represent a valuable
14 economic resource, as the patents can be licensed for use by companies in need of computer training
15 programs. Ms. Osbelt is aware of the economic value contained in these patent applications.

16 22. Over the last few months Ms. Osbelt has refused to participate in the necessary steps
17 required to complete the patent applications with the USPTO. All individuals listed as co-inventors
18 are required to participate in the patent application process or the patent applications expire and are
19 considered abandoned.

20 23. If these necessary steps are not completed, the patent applications will expire the first
21 week of November and will be considered abandoned. If these patent applications are abandoned, it
22 will result in substantial revenue loss in the form of valuable licensing rights for the other co-
23 inventors. If the patent applications expire TCLE will suffer damages of at least \$500,000, and
24 further damages in the form of licensing revenue.

25 C) U.S. Bank Default Claims

26 24. In 2005 NEWN entered into a \$300,000 line of credit with U.S. Bank. To issue a
27 line of credit U.S. Bank required that anyone holding over 20% interest in NEWN both sign and
28

1 personally guarantee the note. In 2005, and then again in 2006, Ms. Osbelt signed and personally
2 guaranteed the U.S. Bank note.

3 25. U.S. Bank required that the line of credit be renewed annually by anyone holding
4 over a 20% interest in NEWN.

5 26. The U.S. Bank note matured and became due April 7, 2007. Despite repeated
6 requests, Ms. Osbelt refused to sign. Ms. Osbelt wrote to U.S. Bank indicating that because she was
7 in negotiations to be bought out by the other members of NEWN, she was reluctant to sign the note.
8 U.S. Bank responded by saying that as soon as her shares were purchased, she would be taken off
9 the note, but that until that event occurred she was required to sign the note or it would go into
10 default.

11 27. Despite U.S. Bank's assurances, Ms. Osbelt refused to sign the note. U.S. Bank sent
12 out a notice of default on the line of credit. The notice of default required NEWN to do a capital
13 call, which was paid by the McDonalds. Ms. Osbelt did not answer the capital call.

14 28. Ms. Osbelt breached her fiduciary duties as a 25% member of NEWN by failing to
15 renew the line of credit with U.S. Bank, directly resulting in U.S. Bank declaring the note in default.
16 Ms. Osbelt has breached her fiduciary duties to NEWN because this default has damaged NEWN's
17 reputation and relationship with U.S. Bank.

18 D) Slander Per Se and Libel Per Se Claims

19 29. In December 2006 NEWN established a 401K pension and profit sharing plan. At
20 that time a meeting was held with all NEWN employees, NEWN's tax and bookkeeping CPA,
21 representatives from NEWN's 401K administrators Bidwell Consulting ("Bidwell"), and
22 representatives from institutional investor Edward Jones to explain the 401K benefits. The
23 presentation included how the plans work, and explained differences between the employee-
24 controlled pension plan (where NEWN matched employee contributions) and the profit sharing
25 plan, where funds vested over a 4 year period. Ms. Osbelt and all NEWN employees were given a
26 complete pension/profit share package including all ERISA rules.

27 30. A document was prepared by Bidwell that outlined the investments that would be
28 made on behalf of each employee for both plans.

1 31. The 2006 tax year pension plan contribution was made in 2007 and was matched
2 100% by NEWN on behalf of Ms. Osbelt. The money was placed in an account authorized by Ms.
3 Osbelt at Edward Jones. This account is eligible to be transferred by Ms. Osbelt to another
4 approved IRA or pension plan at the end of the NEWN plan year.

5 32. Each employee has their own account number and manages their own pension plan
6 investment and determines which investment company will handle the funds for them. NEWN
7 manages the profit sharing plan and all money is invested with Edward Jones.

8 33. Ms. Osbelt is eligible to receive at the end of the plan year 2007 75% of her share of
9 the profit sharing plan, plus any gain in the company's investment. Per plan rules, the 25%
10 unvested portion of her profit share is distributed equally among other plan participants. Ms. Osbelt
11 will therefore have access to move her plan to another account at the end of the plan year and after
12 all administrative functions related to the plan have been completed, in approximately April 2008.

13 34. On or about June 29, 2007, Ms. Osbelt contacted a principal of Bidwell demanding
14 to withdraw her assets from the plans. The Bidwell representative explained to Ms. Osbelt that
15 participants are only entitled to receive a distribution from their account on the first administratively
16 feasible date the first plan year after their termination of employment.

17 35. Ms. Osbelt became upset and accused the Bidwell representative of illegally
18 "conspiring" with the McDonalds to withhold her money. Ms. Osbelt told the Bidwell
19 representative that the McDonalds have embezzled and stolen money from her. Ms. Osbelt made a
20 series of other disparaging remarks about the McDonalds to the Bidwell representative before
21 threatening to sue Bidwell along with the McDonalds before terminating the call.

22 36. A few days later on or about July 2, 2007, Ms. Osbelt sent a letter to McDonalds and
23 cc'ed representatives from both Bidwell Consulting and Edward Jones. Ms. Osbelts July 2, 2007
24 letter demanded to be paid money out of NEWN pension and profit sharing plan, and accused the
25 McDonalds of committing "an intentional act of fraud".

26 37. NEWN and the McDonalds at all times have followed ERISA rules and regulations
27 governing the management of pension and profit-sharing plans. Ms. Osbelt was fully informed at
28 all times of the nature of the pension and profit-sharing plans and chose to participate. NEWN has

1 in no way unlawfully withheld funds from Ms. Osbelt, and her accusations to the contrary are
 2 misinformed and simply incorrect. Despite her fundamental misunderstanding of how the pension
 3 and profit sharing plan worked, Ms. Osbelt communicated to third parties and business associates of
 4 NEWN that the McDonalds embezzled, stole, and committed fraudulent acts against her. These
 5 slanderous and libelous comments have damaged the reputation and business relationship between
 6 NEWN on the one hand and Bidwell and Edward Jones on the other.

7 FIRST CAUSE OF ACTION

8 (Interference with Prospective Economic Advantage)

9 38. Cross-Complainants reallege paragraphs 1-37 above as though fully set forth herein.

10 39. The McDonalds, Ms. Osbelt and a former NEWN employee named Alex Villamil
 11 are co-inventors on computer training program patent applications. These patent applications have
 12 substantial economic value through the ability of the co-inventors to license the rights to third
 13 parties if these patent applications are granted. Ms. Osbelt is aware of the economic value
 14 contained in these patent applications.

15 40. Over the last few months Ms. Osbelt has refused to participate in the necessary steps
 16 required to complete the patent applications with the USPTO. All individuals listed as co-inventors
 17 are required to participate in the patent application process or the patent application expires and is
 18 considered abandoned.

19 41. Ms. Osbelt's refusal to complete the patent application process has interfered with
 20 the ability of the co-inventors to realize valuable licensing revenue. Ms. Osbelt's refusal to assign
 21 these Patents rights has resulted in damages to Cross-Complainants of at least \$500,000.

22 SECOND CAUSE OF ACTION

23 (Fraud)

24 42. Cross-Complainants reallege paragraphs 1-41 above as though fully set forth herein.

25 43. During the course of their business activities, Ms. Osbelt would incur business
 26 related expenses for both NEWN and TCLE and submit these expenses for reimbursement.

27 44. A recent audit of the books and records revealed that Ms. Osbelt submitted
 28 duplicative expense claims to both NEWN and TCLE for reimbursement. Cross-Complainants are

1 informed and believe that Ms. Osbelt incurred certain expenses only once, but would submit
2 duplicative expense claims to both NEWN and TCLE, resulting in Ms. Osbelt being reimbursed for
3 these expenses twice.

4 45. These fraudulent activities by Ms. Osbelt have resulted to damage to Cross-
5 Complainants.

6 **THIRD CAUSE OF ACTION**

7 **(Breach of Fiduciary Duty-Reimbursement Claims)**

8 46. Cross-Complainants reallege paragraphs 1-45 above as though fully set forth herein.

9 47. As a 25% owner of NEWN, Ms. Osbelt had a fiduciary duty not to act in a manner
10 that deliberately harms the interest of NEWN.

11 48. By submitting false and duplicative reimbursement expense requests, Ms. Osbelt
12 damaged NEWN financially by causing NEWN to reimburse her for expenses she did not actually
13 incur.

14 49. Ms. Osbelt's deliberate actions intended to financially damage NEWN breach her
15 fiduciary duty to act in the best interest of NEWN.

16 50. These activities by Ms. Osbelt have resulted in damage to Cross-Complainants.

17 **FOURTH CAUSE OF ACTION**

18 **(Breach of Fiduciary Duty-U.S. Bank default claims)**

19 51. Cross-Complainants reallege paragraphs 1-50 above as though fully set forth herein.

20 52. As a 25% owner of NEWN, Ms. Osbelt had a fiduciary duty not to act in a manner
21 that deliberately harms the interest of NEWN.

22 53. In 2005 Ms. Osbelt signed and personally guaranteed a \$300,000 line of credit with
23 U.S. Bank, with full knowledge that U.S. Bank required the note to be renewed annually.

24 54. On April 1, 2007, U.S. Bank requested Ms. Osbelt to renew the note and guarantee.
25 Ms. Osbelt refused, based on her negotiations with the McDonalds to purchase her shares of
26 NEWN.

55. Despite repeated requests and assurances by U.S. Bank that her name would be removed from the note once her shares were purchased, Ms. Osbelt refused to renew the U.S. Bank note.

56. As a direct result of Ms. Osbelt's refusal to renew the U.S. Bank note, U.S. Bank declared the note in default.

57. Ms. Osbelt's deliberate actions intended to financially damage NEWN breached her fiduciary duty to act in the best interest of NEWN. Ms. Osbelt has breached her fiduciary duties to NEWN because this default has damaged NEWN's reputation and relationship with U.S. Bank.

58. These fraudulent activities by Ms. Osbelt have resulted in damage to Cross-Complainants.

FIFTH CAUSE OF ACTION

(Slander Per Se)

59. Cross-Complainants reallege paragraphs 1-58 above as though fully set forth herein.

60. On or about June 29, 2007, Ms. Osbelt contacted a principal of Bidwell demanding to withdraw her assets from the plan. During this call Ms. Osbelt accused the Bidwell representative of illegally "conspiring" with the McDonalds to withhold her money. Ms. Osbelt further told the Bidwell representative that the McDonalds have embezzled and stolen money from her. Ms. Osbelt made a series of other disparaging remarks about the McDonalds to the Bidwell representative before threatening to sue Bidwell along with the McDonalds before terminating the call.

61. NEWN and the McDonalds at all times have followed ERISA rules and regulations governing the management of pension and profit-sharing plans. NEWN has in no way unlawfully withheld funds from Ms. Osbelt, and her accusations to the contrary are misinformed and simply incorrect.

62. Despite her fundamental misunderstanding of how the pension and profit sharing plan worked, Ms. Osbelt communicated to third parties and business associates of NEWN that the McDonalds embezzled, stole, and committed fraudulent acts against her.

63. These disparaging and untrue comments directed towards third party and NEWN business associate Bidwell constitute slander per se because they relate to NEWN and the McDonalds business and livelihood, and were intended to damage the reputation of NEWN and the McDonalds. Ms. Osbelts slanderous comments have impuned the integrity and moral character of the McDonalds.

64. Ms. Osbelt's slanderous comments have damaged the reputation and business relationship between NEWN on the one hand and Bidwell and on the other.

65. These slanderous comments by Ms. Osbelt have resulted in damage to Cross-Complainants.

SIXTH CAUSE OF ACTION

(Libel Per Se)

66. Cross-Complainants reallege paragraphs 1-65 above as though fully set forth herein.

67. On or about July 2, 2007, Ms. Osbelt sent a letter to McDonalds and cc'ed representatives from both Bidwell Consulting and Edward Jones.

68. Ms. Osbelts July 2, 2007 letter demanded to be paid money out of NEWN pension and profit sharing plan, and accused the McDonalds of committing "an intentional act of fraud".

69. NEWN and the McDonalds at all times have followed ERISA rules and regulations governing the management of pension and profit-sharing plans. NEWN has in no way unlawfully withheld funds from Ms. Osbelt, and her accusations to the contrary are misinformed and simply incorrect. Despite her fundamental misunderstanding of how the pension and profit sharing plan worked, Ms. Osbelt communicated to third parties and business associates of NEWN that the McDonalds embezzled, stole, and committed fraudulent acts against her.

70. These libelous comments have damaged the reputation and business relationship between NEWN on the one hand and Bidwell and Edward Jones on the other.

71. These disparaging and untrue comments directed towards third party and NEWN business associate Bidwell constitute libel per se because they relate to NEWN and the McDonalds business and livelihood, and were intended to damage the reputation of NEWN and the McDonalds.

72. Ms. Osbelt's libelous comments have damaged the reputation and business relationship between NEWN on the one hand and Bidwell and on the other.

73. These libelous comments by Ms. Osbelt have resulted in damage to Cross-Complainants.

PRA YER

WHEREFORE, Cross-Complainants pray for judgment against Cross-Defendant as follows:

1. For damages according to proof at trial, but in no event less than \$ 500,000;
2. For punitive damages as determined by a jury;
3. For pre-judgment interest at the legal rate;
4. For costs of suit, including attorneys' fees; and
5. For such other and further relief as this Court deems just and proper.

Dated: July 18, 2007.

GREENBERG TRAURIG, LLP

By: Cindy Hamilton
William J. Gaines
Karen Rosenthal
Cindy Hamilton

Attorneys for Defendants and Cross-Complainants
David D. McDonald and Donna K. McDonald

Osbelt v. McDonald, et al.

Case No. CIV 463528

PROOF OF SERVICE

I, Cathy Sandifer, declare that I am a citizen of the United States, over the age of eighteen years and not a party to the within action. I am an employee of GREENBERG TRAURIG, LLP, and my business address is 1900 University Avenue, Fifth Floor, East Palo Alto, CA 94303. On July 18, 2007, I served the following documents:

CROSS-COMPLAINT FOR INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE, FRAUD, BREACH OF FIDUCIARY DUTY, SLANDER *PER SE* AND LIBEL *PER SE*

☐ by transmitting via **FACSIMILE** the document(s) listed above to the fax numbers) set forth below, or as stated on the attached service list, on this date at approximately _____, from the sending facsimile machine telephone number of 650-289-7893. The transmission was reported as complete and without error by the machine. Pursuant to California Rules of Court, Rule 2008(e)(4), I caused the machine to print a transmission record of the transmission, a copy of which is attached to the original of this declaration. The transmission report was properly issued by the transmitting facsimile machine.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the **UNITED STATES MAIL** at East Palo Alto, California, addressed as set forth below.

☐ by **OVERNIGHT MAIL** by placing the document(s) listed above in a sealed overnight mail envelope with postage thereon fully prepaid, addressed as set forth below.

☐ **(BY MESSENGER PERSONAL SERVICE)**. I caused delivery of such envelope by hand via courier service to the offices of the addressee.

Joseph W. Cotchett, Esq.
Cotchett, Pitre & McCarthy
840 Malcolm Rd., Ste. 200
Burlingame, CA 94010
Fax No. (650) 697-0577

I am readily familiar with the business practice of my place of employment in respect to the collection and processing of correspondence, pleadings and notices for mailing with United States Postal Service/Express Mail, Federal Express and other overnight mail services. The foregoing sealed envelope was placed for collection and mailing this date consistent with the ordinary business practice of my place of employment, so that it will be picked up this date with postage thereon fully prepaid at East Palo Alto, California, in the ordinary course of such business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 18, 2007, at East Palo Alto, California.


Cathy Sandifer

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO**

JENNIFER OSBELT,

Plaintiff,

v.

**DAVID D. McDONALD,
DONNA K. McDONALD, and
DOES 1 THROUGH 10, inclusive,**

Defendant.

Case No. CIV 463528

JENNIFER OSBELT'S ANSWER TO CROSS COMPLAINT

1 Plaintiff Jennifer Osbelt (hereinafter, "Cross-Defendant") hereby answers the Cross-
 2 Complaint for Interference with Prospective Economic Advantage, Fraud, Breach of Fiduciary
 3 Duty, Slander Per Se and Libel Per Se ("Cross-Complaint") filed by, National Expert Witness
 4 Network, LLC, Technology CLE, LLC, David McDonald and Donna McDonald, (collectively,
 5 "Cross-Plaintiffs") as follows:

6 **GENERAL DENIAL**

7 Plaintiff denies, generally and specifically, each and every allegation contained in Cross-
 8 Plaintiffs' Cross-Complaint, and denies that Cross-Plaintiffs have or will sustain injuries or
 9 damages in the sum or sums alleges, or in any other sum, or at all.

10 **FIRST AFFIRMATIVE DEFENSE**

11 **(Failure to State a Cause of Action)**

12 As and for a first, separate and affirmative defense to the Complaint, and to each and
 13 every cause of action contained therein, Cross-Defendant alleges that Cross-Plaintiffs' Cross-
 14 Complaint, and each of the purported causes of action contained therein, fails to state facts
 15 sufficient to constitute a cause or causes of action against Cross-Defendant.

16 **SECOND AFFIRMATIVE DEFENSE**

17 **(Statute of Limitations)**

18 As and for a further affirmative defense to the Cross-Plaintiffs, and to each and every
 19 cause of action contained therein, Cross-Defendant alleges that the Cross-Complaint is barred by
 20 the statute of limitations set forth in California Code of Civil Procedure sections 335 through
 21 349.4, including, but not limited to sections 337, 337(a), 337.1, 337.15, 337.2, 338.1, 339c,
 22 339.5, 340(3), and 343; and sections 2607(3)(a), 2725(1) and (2) of the California Commercial
 23 Code.

24 **THIRD AFFIRMATIVE DEFENSE**

25 **(Comparative Fault or Negligence of Cross-Plaintiffs)**

26 As and for a further affirmative defense to the Cross-Plaintiffs, and to each and every
 27 cause of action contained therein, Cross-Defendant alleges that Cross-Plaintiffs' injuries and
 28

damages, if any, are the direct and proximate result of Cross-Plaintiffs' own fault or negligence and that, as a result, Cross-Plaintiffs' claim is either barred or proportionately reduced.

FOURTH AFFIRMATIVE DEFENSE

(Comparative Fault or Negligence of Others)

As and for a further affirmative defense to the Cross-Plaintiffs, and to each and every cause of action contained therein, Cross-Defendant alleges that the injuries sustained by Cross-Plaintiffs, if any, were either wholly or in part negligently caused by persons, firms, corporations or entities other than Cross-Defendant and said fault or negligence is either imputed to Cross-Plaintiffs by reason of the relationship of said persons, firms, corporations or entities other than these answering Cross-Defendant to Cross-Plaintiffs and/or said fault or negligence comparatively reduces the percentage of negligence, if, any, by these answering Cross-Defendant.

FIFTH AFFIRMATIVE DEFENSE

(Assumption of the Risk)

As and for a separate affirmative defense to the Cross-Plaintiffs, and to each and every cause of action contained therein, Cross-Defendant alleges that Cross-Plaintiffs acted with full knowledge of all the facts and circumstances surrounding Cross-Plaintiffs alleged injuries and thus assumed any and all risk of injury.

SIXTH AFFIRMATIVE DEFENSE

(Equitable Indemnity/Comparative Contribution)

As and for a further affirmative defense to the Cross-Plaintiffs, and to each and every cause of action contained therein, Cross-Defendant alleges that in the event Cross-Defendant is held liable, this Cross-Defendant is entitled to a percentage contribution of the total liability from persons, firms, corporations or entities other than this answering Cross-Defendant in accordance with the principles of equitable indemnity and comparative contribution.

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SEVENTH AFFIRMATIVE DEFENSE

(Negligence/Liability of Other Persons/Entities)

As and for a further affirmative defense to the Cross-Plaintiffs, and to each and every cause of action contained therein, Cross-Defendant alleges that the charges alleged in the Cross-Complaint, if any, were caused by the negligence and liability of persons, firms, corporations or entities other than these answering Cross-Defendant.

EIGHTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

As and for a further affirmative defense to the Cross-Plaintiffs, and to each and every cause of action contained therein, Cross-Defendant alleges that Cross-Plaintiffs failed to mitigate the alleged damages, if any, which Cross-Plaintiffs claim to have sustained and recovery should be barred or diminished accordingly.

NINTH AFFIRMATIVE DEFENSE

(Willful Misconduct)

As and for a further affirmative defense to the Cross-Plaintiffs, and to each and every cause of action contained therein, Cross-Defendant alleges that the alleged injuries or damages suffered by Cross-Plaintiffs, if any, were the sole and proximate result of the willful misconduct of persons, firms, corporations or entities other than this answering Cross-Defendant.

TENTH AFFIRMATIVE DEFENSE

(In Pari Delicto)

As and for a further affirmative defense to the Cross-Plaintiffs, and to each and every cause of action contained therein, Cross-Defendant alleges the affirmative defense of in pari delicto.

ELEVENTH AFFIRMATIVE DEFENSE

(Obligation Extinguished by Performance)

As and for a further affirmative defense to the Cross-Plaintiffs, and to each and every cause of action contained therein, Cross-Defendant alleges that the Cross-Complaint, and each

1 and every cause of action contained therein, is barred by the provisions of California Civil Code
2 section 1473.

3 **TWELFTH AFFIRMATIVE DEFENSE**

4 **(Superseding Independent Intervening Proximate Cause)**

5 As and for a further affirmative defense to the Cross-Plaintiffs, and to each and every
6 cause of action contained therein, Cross-Defendant alleges that no act or omission on its part was
7 a substantial factor in bringing about the alleged damages to Cross-Plaintiffs, nor was any act or
8 omission on the part of Cross-Defendant a contributing cause of the alleged damages suffered by
9 Cross-Plaintiffs and any alleged acts or omissions of Cross-Defendant were superseded by the
10 alleged acts or omissions of other persons, firms, corporations or entities, including Cross-
11 Plaintiffs, which were the independent, intervening, and proximate cause of any injuries or
12 damages sustained by Cross-Plaintiffs.

13 **THIRTEENTH AFFIRMATIVE DEFENSE**

14 **(Failure to Perform Conditions, Covenants and Promises)**

15 As and for a further affirmative defense to the Cross-Plaintiffs, and to each and every
16 cause of action contained therein, Cross-Defendant alleges that Cross-Plaintiffs failed to perform
17 all conditions, covenants and promises required to be performed in accordance with the terms
18 and conditions of the written contract.

19 **FOURTEENTH AFFIRMATIVE DEFENSE**

20 **(Mistake)**

21 As and for a further affirmative defense to the Cross-Plaintiffs, and to each and every
22 cause of action contained therein, Cross-Defendant alleges that the Cross-Complaint is barred
23 and no cause of action is stated because of mutual and/or unilateral mistake of the parties, if any,
24 described in the Cross-Complaint.

25 **FIFTEENTH AFFIRMATIVE DEFENSE**

26 **(Prevention)**

27 As and for a further affirmative defense to the Cross-Plaintiffs, and to each and every
28 cause of action contained therein, Cross-Defendant alleges that it has fully performed the

1 conditions and covenants required to be performed by it unless and until prevented from doing so
2 by Cross-Plaintiffs.

3 **SIXTEENTH AFFIRMATIVE DEFENSE**

4 **(Statute of Frauds)**

5 As and for a further affirmative defense to the Cross-Plaintiffs, and to each and every
6 cause of action contained therein, Cross-Defendant alleges that the Complaint is barred by the
7 applicable statute of frauds, including, but not limited to, California Commercial Code section
8 2201 and California Civil Code section 1624, in that the alleged contract, if any, was not in
9 writing and was for a price of more than \$500.00.

10 **SEVENTEENTH AFFIRMATIVE DEFENSE**

11 **(Non-Occurrence of Condition Precedent)**

12 As and for a further affirmative defense to the Cross-Plaintiffs, and to each and every
13 cause of action contained therein, Cross-Defendant alleges that Cross-Defendant is not entitled to
14 performance by Cross-Defendant, because a condition precedent to Cross-Defendant's duty to
15 perform has not yet occurred.

16 **EIGHTEENTH AFFIRMATIVE DEFENSE**

17 **(Conduct of Others)**

18 As and for a further affirmative defense to the Cross-Plaintiffs, and to each and every
19 cause of action contained therein, Cross-Defendant alleges that if Cross-Plaintiffs sustained
20 damages, which this answering Cross-Defendant expressly denies, then those damages were
21 caused by persons other than this answering Cross-Defendant and for which this answering
22 Cross-Defendant is not responsible.

23 **NINETEENTH AFFIRMATIVE DEFENSE**

24 **(Waiver)**

25 As and for a further affirmative defense to the Cross-Plaintiffs, and to each and every
26 cause of action contained therein, Cross-Defendant alleges that if Cross-Plaintiffs sustained
27 damages, which this answering Cross-Defendant expressly denies, then Cross-Defendant is
28 barred by the doctrine of waiver from recovering those damages from this answering Cross-

1 Defendant.

2 **TWENTIETH AFFIRMATIVE DEFENSE**

3 **(Estoppel)**

4 As and for a further affirmative defense to the Cross-Plaintiffs, and to each and every
5 cause of action contained therein, Cross-Defendant alleges that if Cross-Plaintiffs sustained
6 damages, which Cross-Defendant expressly denies, then Cross-Plaintiffs are barred by the
7 doctrine of estoppel from recovering those damages from Cross-Defendant.

8 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

9 **(Unclean Hands)**

10 As and for a further affirmative defense to the Cross-Plaintiffs and to each and every
11 cause of action contained therein, Cross-Defendant alleges that Cross-Plaintiffs are barred from
12 seeking equitable relief by the doctrine of unclean hands by virtue of Cross-Plaintiffs own
13 conduct.

14 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

15 **(Lack of Causation)**

16 As and for a further affirmative defense to the Cross-Plaintiffs, and to each and every
17 cause of action contained therein, Cross-Defendant alleges that Cross-Plaintiffs' damages, if any,
18 were not actually or proximately caused by any acts, conduct, or omissions of Cross-Defendant.

19 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

20 **(Failure To Plead Fraud With Particularity)**

21 The Cross-Plaintiffs fail to describe Cross-Defendant's claims with sufficient
22 particularity. This description also violates the requirement under California law that fraud
23 causes of action be pled with specificity because said causes of action involve a serious attack
24 upon a party's character. (Committee on Children's Television v. General Foods Corp (1983) 35
25 Cal.3d 197.) Every element of the cause of action for fraud must be alleges in full, factually and
26 specifically. (Wilhelm v. Pray, Price, Williams & Russell (1986) 186 Cal.App.3d 186.) The
27 particularity requirement necessitates pleading facts that "show how, when, where, to whom, and
28

1 by what means the representations were tendered." (Lazar v. Superior Court (1996) 12 Cal.4th
2 631.)

3 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

4 **(Offset)**

5 Cross-Defendant alleges that the losses to Cross-Plaintiffs, if any, were occasioned as a
6 result of their failure to comply with the terms of the alleged agreements between Cross-Plaintiffs
7 and others herein and that Cross-Defendant has suffered damages as a result of Cross-Plaintiffs
8 actions. Therefore, Cross-Defendant is entitled to an offset as determined with respect to such
9 failure against Cross-Defendant's liability, if any.

10 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

11 **(Laches)**

12 Cross-Defendant alleges that any relief sought by Cross-Plaintiffs are barred under the
13 equitable doctrine of laches.

14 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

15 **(Material Breach)**

16 Cross-Defendant alleges that Cross-Plaintiffs' claims are barred by their material breach
17 of any and all agreements, if any, between Cross-Plaintiffs and Cross-Defendant, and that such
18 breach discharges Cross-Defendant in whole or in part.

19 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

20 **(Wrongful/Unlawful Conduct)**

21 Cross-Defendant alleges that Cross-Plaintiffs' damages, if they have suffered any damage
22 at all, were proximately caused and/or contributed to by the wrongful or unlawful conduct of
23 Cross-Plaintiffs and/or persons whose conduct is imputable to them which precludes recovery by
24 Cross-Plaintiffs. Accordingly, Cross-Plaintiffs are wholly and/or partially barred from the
25 recovery alleged and prayed for in its Cross-Complaint.

26 ///

27 ///

28 ///

TWENTY-EIGHTH AFFIRMATIVE DEFENSE**(Release by Conduct)**

Cross-Defendant alleges that Cross-Plaintiffs' conduct constitutes a full release by Cross-Plaintiffs of any and all claims it may have had against Cross-Defendant.

TWENTY-NINTH AFFIRMATIVE DEFENSE**(Ratification)**

Cross-Defendant is informed and believes and thereon alleges that at all times mentioned in the Complaint, Cross-Plaintiffs were aware of, approved of, ratified or acquiesced in the conduct of Cross-Defendant. Cross-Plaintiffs are therefore barred from recovery as a result of any conduct on the part of Cross-Defendant, if any, because of Cross-Plaintiffs' approval, ratification or acquiescence in that conduct.

THIRTIETH AFFIRMATIVE DEFENSE**(Negligence of Others)**

Cross-Defendant alleges that Cross-Plaintiffs' damages, if they have suffered any damages at all, were proximately caused and/or contributed to by the negligence and/or otherwise wrongful or unlawful conduct of Cross-Plaintiffs and/or persons whose conduct is imputable to Cross-Plaintiffs, which precludes recovery by Cross-Plaintiffs. Accordingly, Cross-Plaintiffs is wholly and/or partially barred from recovery herein.

THIRTY-FIRST AFFIRMATIVE DEFENSE**(Justification - Cross-Defendant's Statements Were Truthful)**

Cross-Defendant alleges that the statements complained of in Cross-Defendant's complaint were not false.

THIRTY-SECOND AFFIRMATIVE DEFENSE**(Additional Defenses)**

Cross-Defendant alleges that it presently has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, defenses available. Moreover, the unspecified nature of Cross-Plaintiffs' Cross-Complaint leaves Cross-Defendant entirely uncertain (and, in fact, entirely ignorant) of the nature of Cross-Plaintiffs' claims. Cross-

1 Defendant reserves the right to assert additional defenses in the event that investigation,
2 discovery and/or identification of claims by Cross-Plaintiffs indicate any such defenses would be
3 appropriate.

4
5
6 **PRAYER**

7 WHEREFORE, Cross-Defendant prays:

- 8 1. That Cross-Plaintiffs take noting by reason of their Cross-Complaint
9 2. For Costs of suit incurred herein;
10 3. For reasonable attorneys' fees; and
11 4. For such other relief as the court deems just and proper.

12
13
14
15 DATED: August 22, 2007

COTCHETT, PITRE & McCARTHY

16
17
18 By: 

19 ARA J. BAGCHOURIAN
20 Attorneys for Plaintiffs
21
22
23
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25
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Jennifer Osbelt, v. David D. McDonald, Donna K. McDonald, et al.
San Mateo Superior Court CIV 463528

PROOF OF SERVICE

I am employed in San Mateo County, which is where service of the document(s) referred to below occurred. I am over the age of 18 and not a party to the within action. My business address is Cotchett, Pitre & McCarthy, San Francisco Airport Center, 840 Malcolm Road, Suite 200, Burlingame, California 94010. I am readily familiar with Cotchett, Pitre & McCarthy's practices for the service of documents. On this date, I served a true copy of the following document(s) in the manner listed below:

JENNIFER OSBELT'S ANSWER TO CROSS COMPLAINT

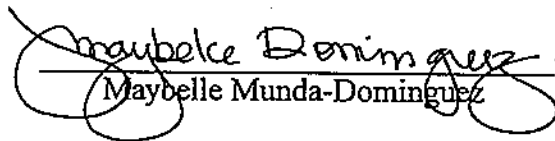
XXX BY MAIL: I am readily familiar with this firm's practice for collection and processing of correspondence for mailing. Following that practice, I placed a true copy of the aforementioned document(s) in a sealed envelope, addressed to each addressee, respectively, as specified below. The envelope was placed in the mail at my business address, with postage thereon fully prepaid, for deposit with the United States Postal Service on that same day in the ordinary course of business.

William J. Goines
 Karen Rosenthal
 Cindy Hamilton
GREENBERG TRAURIG, LLP
 1900 University Avenue, Fifth Floor
 East Palo Alto, CA 94303
 Tel.: (650) 328-8500
 Fax: (650) 328-8508

BY HAND DELIVERY: I am readily familiar with this firm's practice for causing documents to be served by hand delivery. Following that practice, I caused the sealed envelope containing the aforementioned document(s) to be hand delivered to the addressee(s) specified below.

BY OVERNIGHT COURIER SERVICE: I am readily familiar with this firm's practice for causing documents to be served by overnight courier. Following that practice, I caused the sealed envelope containing the aforementioned document(s) to be delivered via overnight courier service to the addressee(s) specified below:

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Burlingame, California, on August 22, 2007.


 Maybelle Munda-Dominguez

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): JOSEPH W. COTCHETT #36324 ARA JABAGCHOURIAN #205777 SEAN E. PONIST #204712 COTCHETT, PITRE & MC CARTHY 840 MALCOLM ROAD, SUITE 200 BURLINGAME, CA 94010 TELEPHONE NO.: (650) 697-6000 FAX NO. (Optional): (650) 697-0577 E-MAIL ADDRESS (Optional): jcotchett@cpmllegal.com ATTORNEY FOR (Name): PLAINTIFF JENNIFER OSBELT		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO STREET ADDRESS: 400 COUNTY CENTER MAILING ADDRESS: CITY AND ZIP CODE: REDWOOD CITY, CA 94063 BRANCH NAME:		
PLAINTIFF/PETITIONER: JENNIFER OSBELT DEFENDANT/RESPONDENT: DAVID D. McDONALD, DONNA K. McDONALD		
CASE MANAGEMENT STATEMENT (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)		CASE NUMBER: CIV 463528
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: October 11, 2007 Time: 9:00 a.m. Dept.: 8 Div.: Room: Address of court (if different from the address above):		

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

- Party or parties (answer one):
 - ☒ This statement is submitted by party (name): Plaintiff, Jennifer Osbelt
 - ☐ This statement is submitted jointly by parties (names):
- Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)
 - The complaint was filed on (date): June 5, 2007
 - ☒ The cross-complaint, if any, was filed on (date): July 18, 2007
- Service (to be answered by plaintiffs and cross-complainants only)
 - ☒ All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
 - ☐ The following parties named in the complaint or cross-complaint
 - ☐ have not been served (specify names and explain why not):
 - ☐ have been served but have not appeared and have not been dismissed (specify names):
 - ☐ have had a default entered against them (specify names):
 - ☐ The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):
- Description of case
 - Type of case in ☒ complaint ☐ cross-complaint (describe, including causes of action):
 Complaint was filed on June 5, 2007 and alleges causes of action for Breach of Contract, Breach of Fiduciary Duty, Accounting, Slander Per Se and Violations of the Beverly-Killea Limited Liability Company Act.

CM-110

PLAINTIFF/PETITIONER: JENNIFER OSBELT	CASE NUMBER:
DEFENDANT/RESPONDENT: DAVID D. McDONALD, DONNA K. McDONALD	CIV 463528

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)
On March 26, 2007, David McDonald, on his own behalf, and that of his wife, offered to purchase Jennifer Osbelt's interest in NEWN for more than \$1.8 million, an offer which Osbelt accepted. Despite numerous discussions and demands regarding performance, the McDonalds have failed to perform under the agreement to purchase Osbelt's interest in NEWN and have continued to breach their fiduciary obligations and obligations under the Operating Agreement and the Beverly-Killea Limited Liability Company Act.

☐ (If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial

The party or parties request ☒ a jury trial ☐ a nonjury trial (if more than one party, provide the name of each party requesting a jury trial):

6. Trial date

- a. ☐ The trial has been set for (date):
b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):
c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):
January 7, 2008 - January 18, 2008 (trial); January 22, 2008 - February 29, 2008 (trial); January 28, 2008 - February 8, 2008 (arbitration) and March 17, 2008 - March 28, 2008 (trial).

7. Estimated length of trial

The party or parties estimate that the trial will take (check one):

- a. ☒ days (specify number): 10 days
b. ☐ hours (short causes) (specify):

8. Trial representation (to be answered for each party)

The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:

- a. Attorney:
b. Firm:
c. Address:
d. Telephone number:
e. Fax number:
f. E-mail address:
g. Party represented:

☐ Additional representation is described in Attachment 8.

9. Preference

☐ This case is entitled to preference (specify code section):

10. Alternative Dispute Resolution (ADR)

- a. Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.
b. ☐ All parties have agreed to a form of ADR. ADR will be completed by (date):
c. ☐ The case has gone to an ADR process (indicate status):

CM-110

PLAINTIFF/PETITIONER: JENNIFER OSBELT	CASE NUMBER:
DEFENDANT/RESPONDENT: DAVID D. McDONALD, DONNA K. McDONALD	CIV 463528

10. d. The party or parties are willing to participate in (check all that apply):

- (1) ☒ Mediation
- (2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
- (3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)
- (4) ☐ Binding judicial arbitration
- (5) ☐ Binding private arbitration
- (6) ☐ Neutral case evaluation
- (7) ☐ Other (specify):

- e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.
- f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
- g. ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):

11. Settlement conference

- ☒ The party or parties are willing to participate in an early settlement conference (specify when):

12. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (name):
- b. Reservation of rights: ☐ Yes ☐ No
- c. ☐ Coverage issues will significantly affect resolution of this case (explain):

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

- ☐ Bankruptcy ☐ Other (specify):

Status:

14. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.
- (1) Name of case:
- (2) Name of court:
- (3) Case number:
- (4) Status:

☐ Additional cases are described in Attachment 14a.

- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party):

15. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

16. Other motions

- ☒ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):
Discovery motions, Motions for Summary Judgement/Adjudication and Motions in Limine.

CM-110

PLAINTIFF/PETITIONER: JENNIFER OSBELT	CASE NUMBER:
DEFENDANT/RESPONDENT: DAVID D. McDONALD, DONNA K. McDONALD	CIV 463528

17. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☒ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

Party	Description	Date
Plaintiff	Depositions of David McDonald and Donna McDonald	October 2007
Plaintiff	Third party depositions	November 2007-December 2008
Plaintiff	Written Discovery	January 2008

- c. ☒ The following discovery issues are anticipated (*specify*): Issues regarding the disclosure of financial information.

18. Economic Litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

19. Other issues

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

20. Meet and confer

- a. ☒ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):

21. Case management orders

Previous case management orders in this case are (*check one*): ☒ none ☐ attached as Attachment 21.

22. Total number of pages attached (*if any*): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: September 26, 2007

Sean E. Ponist
(TYPE OR PRINT NAME)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached

1 *Jennifer Osbelt, v. David D. McDonald, Donna K. McDonald, et al.*
2 *San Mateo Superior Court CIV 463528*

3 **PROOF OF SERVICE**

4 I am employed in San Mateo County, which is where service of the document(s) referred
5 to below occurred. I am over the age of 18 and not a party to the within action. My business
6 address is Cotchett, Pitre & McCarthy, San Francisco Airport Center, 840 Malcolm Road, Suite
7 200, Burlingame, California 94010. I am readily familiar with Cotchett, Pitre & McCarthy's
8 practices for the service of documents. On this date, I served a true copy of the following
9 document(s) in the manner listed below:

10 **PLAINTIFF'S CASE MANAGEMENT STATEMENT**

11 **BY MAIL:** I am readily familiar with this firm's practice for collection and processing
12 of correspondence for mailing. Following that practice, I placed a true copy of the
13 aforementioned document(s) in a sealed envelope, addressed to each addressee,
14 respectively, as specified below. The envelope was placed in the mail at my business
15 address, with postage thereon fully prepaid, for deposit with the United States Postal
16 Service on that same day in the ordinary course of business.

17 **XXX BY FACSIMILE:** I am readily familiar with this firm's practice for causing documents
18 to be served by facsimile. Following that practice, I caused the aforementioned
19 document(s) to be transmitted to the telephone number(s) of the addressee(s) specified
20 below:

21 William J. Goines
22 Karen Rosenthal
23 Cindy Hamilton
24 **GREENBERG TRAURIG, LLP**
25 1900 University Avenue, Fifth Floor
26 East Palo Alto, CA 94303
27 Tel.: (650) 328-8500
28 Fax: (650) 328-8508

29 **BY HAND DELIVERY:** I am readily familiar with this firm's practice for causing
30 documents to be served by hand delivery. Following that practice, I caused the sealed
31 envelope containing the aforementioned document(s) to be hand delivered to the
32 addressee(s) specified below.

33 **BY OVERNIGHT COURIER SERVICE:** I am readily familiar with this firm's
34 practice for causing documents to be served by overnight courier. Following that
35 practice, I caused the sealed envelope containing the aforementioned document(s) to be
36 delivered via overnight courier service to the addressee(s) specified below:

37 I declare under penalty of perjury, under the laws of the State of California, that the
38 foregoing is true and correct. Executed at Burlingame, California, on September 26, 2007.

39 
40 Maybelle Munda-Dominguez

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): William J. Goines, SBN #61290/ Cindy Hamilton, SBN #217951 Greenberg Traurig, LLP 1900 University Ave., 5 th Fl. East Palo Alto, CA 94303 TELEPHONE NO.: (650) 328-8500 FAX NO. (Options): (650) 328-850 E-MAIL ADDRESS (Options): goinesw@gtlaw.com; hamiltonc@gtlaw.com ATTORNEY FOR (Name): DEFENDANTS DAVE MCDONALD, DONNA MCDONALD		FOR COURT USE ONLY E-FILED SAN MATEO COUNTY September 26, 2007 Clerk of the Superior Court By <u>U. FINAU</u> DEPUTY CLERK	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO STREET ADDRESS: 400 County Center MAILING ADDRESS: Same CITY AND ZIP CODE: Redwood City, CA 94063 BRANCH NAME: Civil Division			
PLAINTIFF/PETITIONER: JENNIFER OSBELT DEFENDANT/RESPONDENT: DAVID D. MCDONALD, DONNA K. MCDONALD			
CASE MANAGEMENT STATEMENT (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)		CASE NUMBER: CIV 463528	
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: OCTOBER 11, 2007 Time: 9:00 a.m. Dept.: 8 Div.: Room: Address of court (if different from the address above):			

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

- Party or parties (answer one):
 - ☐ This statement is submitted by party (name):
 - ☒ This statement is submitted jointly by parties (names): Defendants and Cross-Complainants David McDonald, Donna McDonald, National Expert Witness Network LLC, Technology CLE LLC
- Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)
 - The complaint was filed on (date): June 5, 2007
 - ☒ The cross-complaint, if any, was filed on (date): July 18, 2007
- Service (to be answered by plaintiffs and cross-complainants only)
 - ☒ All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
 - ☐ The following parties named in the complaint or cross-complaint
 - ☐ have not been served (specify names and explain why not):
 - ☐ have been served but have not appeared and have not been dismissed (specify names):
 - ☐ have had a default entered against them (specify names):
 - ☐ The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):
- Description of case
 - Type of case in ☒ complaint ☐ cross-complaint (describe, including causes of action):
 Complaint alleges causes of action for Breach of Contract, Breach of Fiduciary Duty, Accounting, Slander, and Violations of the Beverly-Killea Limited Liability Company Act. Cross-Complaint alleges causes of action for Interference with Prospective Economic Advantage, Fraud, Breach of Fiduciary Duty, Slander and Libel Per Se.

CM-110

PLAINTIFF/PETITIONER: Jennifer Osbell	CASE NUMBER: CIV 463528
DEFENDANT/RESPONDENT: David D. McDonald, Donna K. McDonald	

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.) Cross-Complainants bring this action alleging that Plaintiff Jennifer Osbell submitted duplicative expense reimbursements, refused to complete valuable patent applications and refused to renew a line of credit with U.S. Bank in violation of her fiduciary duties to National Expert Witness Network and Technology CLE.

☐ (If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial

The party or parties request ☒ a jury trial ☐ a nonjury trial (if more than one party, provide the name of each party requesting a jury trial);

6. Trial date

- a. ☐ The trial has been set for (date):
 b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):

- c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):
 January 7-11 (trial), January 28-February 8 (trial), February 12-28 (vacation)

7. Estimated length of trial

The party or parties estimate that the trial will take (check one):

- a. ☒ days (specify number): 5-7 days
 b. ☐ hours (short causes) (specify):

8. Trial representation (to be answered for each party)

The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:

- a. Attorney:
 b. Firm:
 c. Address:
 d. Telephone number:
 e. Fax number:
 f. E-mail address:
 g. Party represented:

☐ Additional representation is described in Attachment 8.

9. Preference

☐ This case is entitled to preference (specify code section):

10. Alternative Dispute Resolution (ADR)

- a. Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.
 b. ☐ All parties have agreed to a form of ADR. ADR will be completed by (date):
 c. ☐ The case has gone to an ADR process (indicate status):

CM-110

PLAINTIFF/PETITIONER: Jennifer Osbelt	CASE NUMBER: CIV 463528
DEFENDANT/RESPONDENT: David D. McDonald, Donna K. McDonald	

10. d. The party or parties are willing to participate in (check all that apply):

- (1) ☒ Mediation
 (2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
 (3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)
 (4) ☐ Binding judicial arbitration
 (5) ☐ Binding private arbitration
 (6) ☐ Neutral case evaluation
 (7) ☐ Other (specify):

- e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.
 f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
 g. ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):

11. Settlement conference

- ☒ The party or parties are willing to participate in an early settlement conference (specify when):

12. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (name):
 b. Reservation of rights: ☐ Yes ☐ No
 c. ☐ Coverage issues will significantly affect resolution of this case (explain):

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

- ☐ Bankruptcy ☐ Other (specify):

Status:

14. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.
 (1) Name of case:
 (2) Name of court:
 (3) Case number:
 (4) Status:
☐ Additional cases are described in Attachment 14a
 b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party):

15. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

16. Other motions

- ☒ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):
 Plaintiffs reserve the right to file such motions as may be deemed necessary and appropriate during the course of this proceeding.

CM-110

PLAINTIFF/PETITIONER: Jennifer Osbelt	CASE NUMBER: CIV 463528
DEFENDANT/RESPONDENT: David D. McDonald, Donna K. McDonald	

17. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☒ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

Party	Description	Date
Defendants	Deposition of Plaintiff	Fall 2007
Defendants	Form & Special Interrogatories; Requests for Admission and Document Demand	Fall 2007
Defendants	Third party depositions	Fall 2007

- c. ☒ The following discovery issues are anticipated (*specify*): Issued regarding disclosure of personal tax returns

18. Economic Litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

19. Other Issues

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

20. Meet and confer

- a. ☒ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):

21. Case management orders

Previous case management orders in this case are (*check one*): ☒ none ☐ attached as Attachment 21.

22. Total number of pages attached (*if any*): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: September 26, 2007

William J. Goines/Cindy Hamilton

(TYPE OR PRINT NAME)

► 
(SIGNATURE OF PARTY OR ATTORNEY)

►

(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached

E-FILE

SAN MATEO COUNTY

September 26, 2007

Osbelt v. McDonald, et al.

Clerk of the Superior Court

By U. FINAU
DEPUTY CLERK

Case No. CIV 463528

PROOF OF SERVICE

I, Karen Nelson, declare that I am a citizen of the United States, over the age of eighteen years and not a party to the within action. I am an employee of GREENBERG TRAURIG, LLP, and my business address is 1900 University Avenue, Fifth Floor, East Palo Alto, CA 94303. On September 26, 2007, I served the following documents:

CASE MANAGEMENT STATEMENT

☒ by transmitting via **FACSIMILE** the document(s) listed above to the fax numbers) set forth below, or as stated on the attached service list, on this date at approximately _____, from the sending facsimile machine telephone number of 650-289-7893. The transmission was reported as complete and without error by the machine. Pursuant to California Rules of Court, Rule 2008(e)(4), I caused the machine to print a transmission record of the transmission, a copy of which is attached to the original of this declaration. The transmission report was properly issued by the transmitting facsimile machine.

☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the **UNITED STATES MAIL** at East Palo Alto, California, addressed as set forth below.

☐ by **OVERNIGHT MAIL** by placing the document(s) listed above in a sealed overnight mail envelope with postage thereon fully prepaid, addressed as set forth below.

☐ **(BY MESSENGER PERSONAL SERVICE)**. I caused delivery of such envelope by hand via courier service to the offices of the addressee.

Ara Jabaghourian, Esq.
Cotchett, Pitre & McCarthy
840 Malcolm Rd., Ste. 200
Burlingame, CA 94010
Fax No. (650) 697-0577

I am readily familiar with the business practice of my place of employment in respect to the collection and processing of correspondence, pleadings and notices for mailing with United States Postal Service/Express Mail, Federal Express and other overnight mail services. The foregoing sealed envelope was placed for collection and mailing this date consistent with the ordinary business practice of my place of employment, so that it will be picked up this date with postage thereon fully prepaid at East Palo Alto, California, in the ordinary course of such business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 26, 2007, at East Palo Alto, California.


Karen Nelson

1
Proof of Service

SV 346222513v1



1 GREENBERG TRAURIG, LLP
2 WILLIAM J. GOINES (SBN 61290)
3 KAREN ROSENTHAL (SBN 209419)
4 CINDY HAMILTON (SBN 217951)
5 1900 University Avenue, Fifth Floor
6 East Palo Alto, CA 94303
7 Telephone: (650) 328-8500
8 Facsimile: (650) 328-8508

9 Attorneys for Defendants and Cross-Complainants
10 DAVID MCDONALD, DONNA MCDONALD, NATIONAL
11 EXPERT WITNESS NETWORK, and TECHNOLOGY CLE

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN MATEO

14 JENNIFER OSBELT,
15 an individual,

16 Plaintiff,

17 v.

18 DAVID MCDONALD, DONNA K.
19 MCDONALD; and
20 DOES 1-10, inclusive

21 Defendants.

Case No. CIV 463528

~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER

BY FAX

22 AND RELATED CROSS-ACTION

23 It is hereby stipulated and agreed between Plaintiff and Cross-Defendant Jennifer Osbelt and
24 Palo Alto Technical, and Defendant and Cross-Complainant David McDonald, Donna K. McDonald,
25 National Expert Witness Network and Technology CLE, by and through their respective attorneys of
26 record, and all other counsel, parties, individuals or entities entering into this Protective Order that all
27 documents produced which are marked "Confidential" shall be subject to the terms and conditions set
28 forth below.

1 This Protective Order is entered into by reason of the fact that certain documents are highly
2 sensitive, pertinent to the Parties' ongoing business interests and/or the rights to privacy of the parties to
3 this action or third parties whose right to privacy the parties desire to protect.

4 **A. INFORMATION SUBJECT TO THIS PROTECTIVE ORDER**

5 1. This Protective Order governs the access to, use and distribution of information which
6 may be produced in discovery in this action. For purposes of this Protective Order, "information"
7 includes documents, pleadings, responses to interrogatories or requests for admissions, and transcripts or
8 tapes of deposition testimony.

9 2. If a party that produces information (a "Producing Party") believes that such information
10 should be governed by the protection of this Protective Order, the producing party shall mark the
11 information with the designation "Confidential".

12 **B. PERMITTED USE**

13 1. Information designated "Confidential" shall not be used or disclosed for any purpose
14 whatsoever, other than for the purpose of prosecuting or defending the action.

15 2. Information designated "Confidential" shall be disclosed only to the following categories
16 of persons:

17 a. Counsel of record and in-house counsel for any party or its affiliated entities, and
18 counsel's partners, associates, legal assistants and employees after such counsel has entered into and
19 signed this Protective Order;

20 b. Parties to this action and representatives of each party, provided that each party and/or
21 representative agrees to be bound by the provisions of this Protective Order;

22 c. Experts and consultants employed by any party hereto or their legal counsel in this
23 action, provided that such persons agree to be bound by the provision of the Protective Order. Attached
24 as Exhibit A is a statement prepared for experts and consultants to sign before presented with
25 Confidential information, acknowledging their agreement to comply with the terms and conditions of
26 this Protective Order;

27 d. Court officials (including court reporters, person operating video recording equipment
28 at deposition, and any referee or special master appointed by the Court); and,

1
2 e. Witnesses and deponents, provided that such persons agree to be bound by the
3 provisions of this Protective Order and the jurisdiction of this Court and have so indicated on the record
4 and under oath.

5 **C. PROCEDURES FOR CHALLENGING A DESIGNATION**

6 1. If a party that receives information ("Receiving Party") objects to a designation of
7 information as "Confidential", the Receiving Party shall so inform the Producing Party and in writing
8 request a reconsideration of the designation, stating with particularity which information it contends is
9 improperly designated, and the reason for the objection.

10 2. If within five (5) days of a request to reconsider a designation, the Producing Party has
11 not agreed in writing to alter the designation, the Receiving Party may move the Court to have the
12 designation removed. The prevailing party in such a motion shall have the right to seek any kind of
13 monetary, evidentiary or other sanction for any alleged bad faith or impropriety in (i) the original
14 designation (ii) the request for reconsideration, or (iii) the refusal or failure to alter the designation.

15 3. Until the Court has entered an order removing the designation, the information whose
16 designation is at issue shall remain "Confidential" under the terms of this Protective Order, and shall be
17 disclosed only as permitted in Paragraphs B.2.(a)-(e) above.

18 **D. RETENTION OF CONFIDENTIAL INFORMATION**

19 1. The attorneys for the parties are directed to retain information designated as Confidential
20 in their custody and control and to take the necessary precautions to prevent persons not authorized as
21 provided above from obtaining access to such information.

22 2. Within twenty-one (21) days after the conclusion of the litigation of the action (including
23 appeals), counsel for the receiving party must either return to the producing party all Confidential
24 information and all copies thereof, or shall certify that such information has been destroyed. An
25 exception to this provision is Confidential documents referenced in pleadings, counsel's work product
26 and Confidential documents attached as exhibits, may be retained. These Confidential documents shall
27 remain subject to the terms of the Protective Order.
28

1 **E. TRIAL**

2 1. Nothing herein is intended to govern, limit or affect the right of any party to admit into
 3 evidence Confidential information in the trial of this action. If, for the purpose of trial or adjudication,
 4 any Party designating records as Confidential ("Producing Party") wishes to ensure that such
 5 Confidential information is filed with the Court under seal, the Producing Party must obtain a court
 6 order permitting the filings of such Confidential information under seal in accordance with California
 7 Trial Court Rules 243.1 and 243.2. Should any Party who has received records designated as
 8 Confidential by another Party wishes to submit such Confidential information to the Court for purposes
 9 of trial or adjudication ("Receiving Party"), the Receiving Party must lodge the Confidential information
 10 with the Court and notify in writing the Producing Party that such Confidential information will be
 11 placed in the public record unless a timely motion or application is filed to seal the records in
 12 accordance with Rule 243(b)(3)(A). The Receiving Party must provide the Producing Party with at least
 13 ten days' notice of its intent to lodge Confidential information with the Court.
 14

15 **F. LIMITATIONS**

16 1. This Protective Order shall not affect:

- 17 a. a producing party's right to use its own Confidential information in any way and for
 18 any purpose;
- 19 b. any party's right to object to any discovery demand on any ground;
- 20 c. any party's right to seek an order compelling discovery with respect to discovery
 21 demand; or
- 22 d. any party's right to object to the admissibility of any information on any ground.

23 //

24 //

25 //

26 //

27 //

28 //

10/03/2007 09:27 FAX

COTCHETT PITRE MC CARTHY

@002/002

1
2 2. The terms of this Protective Order shall survive and remain in full force and effect after
3 the termination of the Action. The Court shall retain jurisdiction to determine any issues arising from
4 the terms of this Protective Order.

5 IT IS SO STIPULATED:

6
7 Dated: October 3, 2007 

Ara Jabagchouhian
COTCHETT, PITRE & MCCARTHY
840 Malcolm Road
Burlingame, CA 94010

10
11 Dated: 10-4-07 

William J. Geines, Esq.
GREENBERG TRAURIG, LLP
1900 University Avenue, 5th Floor
East Palo Alto, CA 94303

14 IT IS SO ORDERED:

15
16 Date: OCT 10 2007

GEORGE A. MIRAM

Judge of the Superior Court





Case 08-cv-00534-PJH Document 1-13 Filed 01/24/2008 Page 2 of 2
Superior Court of California
County of San Mateo
Civil Department
400 County Center
Redwood City, CA 94063-1655
www.sanmateocourt.org

JENNIFER OSBELT Plaintiff(s) vs. DAVID D. MCDONALD Defendant(s)	Case No.: CIV 463528 Clerk's Notice of Jury Trial and Mandatory Settlement Conference
Title: JENNIFER OSBELT VS DAVID MCDONALD ET AL	

JOSEPH W COTCHETT
840 MALCOLM ROAD
SUITE 200
BURLINGAME CA 94010

CINDY HAMILTON
1900 UNIVERSITY AVENUE
FIFTH FLOOR
EAST PALO ALTO CA 943030

The above named parties and their respective attorneys are hereby notified that the above matter is calendared for a **Mandatory Settlement Conference** on **04/25/08 at 9:30 AM** at the Hall of Justice and Records, 400 County Center, Redwood City, California 94063.

Parties are directed to comply with Local Rule of Court 2.4 and are admonished that the Court will insist on strict compliance therewith. Sanctions may be imposed for failure to comply. A conference statement shall be delivered to the Court with proof of actual service on the opposing party no less than five (5) court days before the date of the hearing.

The above named parties and their respective attorneys are hereby notified that the above matter is calendared for **Jury Trial on 05/12/08 at 9:00 AM in the Department of the Presiding Judge** at the Hall of Justice and Records, 400 County Center, Redwood City, California 94063.

Note: Jury fees must be posted at least 25 days prior to Jury Trial.

Pursuant to Rule 3.1385, California Rules of Court, you must advise the Court of any change of status, or settlement of this case.

CLERK'S CERTIFICATE OF MAILING

I hereby certify that I am the clerk of this Court, not a party to this cause; that I served a copy of this notice on the below date, by placing a copy thereof in separate sealed envelopes addressed to the address shown by the records of this Court, and by then sealing said envelopes and depositing same, with postage fully pre-paid thereon, in the United States Mail at Redwood City, California.

Date: 10/22/07

John C. Fitton
Court Executive Officer/Clerk

By: KATHRYN PLANAGAN
Deputy Clerk



Attorney or Party without Attorney 650-697-6000 (Name, Address, Telephone, Fax, State Bar membership number): SEAN E. PONIST Cotchett, Pitre & McCarthy 840 Malcolm Rd., Burlingame CA 94010		Court Use Only
Superior Court of California, County of San Mateo Hall of Justice and Records 400 County Center Redwood City, CA 94063-1655 (650) 363-4711		
Plaintiff(s): JENNIFER OSBELT		Case Number: CIV 463528
Defendant(s): DAVID D. McDONALD, DONNA K. McDONALD, and DOES 1 THROUGH 10, inclusive		Current CMC Date: N/A

STIPULATION AND ORDER TO APPROPRIATE DISPUTE RESOLUTION

Plaintiff will file this stipulation with the Clerk's Office 10 days prior to or 3 weeks following the first Case Management Conference unless directed otherwise by the Court and ADR Director [Local Rule 2.3(i)(3)]. Please attach a Service List.

The parties hereby stipulate that all claims in this action shall be submitted to (select one):

- | | |
|---|--|
| <input checked="" type="checkbox"/> Voluntary Mediation | <input type="checkbox"/> Binding Arbitration (private) |
| <input type="checkbox"/> Neutral Evaluation | <input type="checkbox"/> Settlement Conference (private) |
| <input type="checkbox"/> Non-Binding Judicial Arbitration CCP 1141.12 | <input type="checkbox"/> Summary Jury Trial |
| <input type="checkbox"/> Other: _____ | |

Case Type: Unlimited

Neutral's name and telephone number: Hon. V. Gene McDonald (Ret.), 415-982-5267

Date of session: 1/3/08

(Required for continuance of CMC except for non-binding judicial arbitration)

Identify by name the parties to attend ADR session: Jennifer Osbelt, David McDonald, Donna McDonald, NEWN, TCLE

ORIGINAL SIGNATURES

SEAN E. PONIST

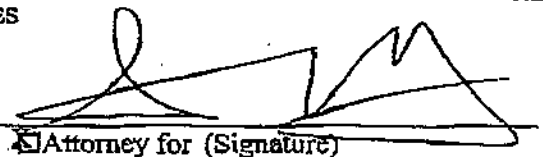
Type or print name of ☐ Party without attorney

☒ Plaintiff/Petitioner ☐ Defendant/Respondent/Contestant

WILLIAM GOINES/CINDY HAMILTON

Type or print name of ☐ Party without attorney

☐ Plaintiff/Petitioner ☒ Defendant/Respondent/Contestant


☒ Attorney for (Signature)

Attorney or Party without attorney


☐ Attorney for (Signature)

Attorney or Party without attorney

STIPULATION AND ORDER TO APPROPRIATE DISPUTE RESOLUTION

Type or print name of ☐ Party without attorney

☐ Plaintiff/Petitioner ☐ Defendant/Respondent/Contestant

☐ Attorney for (Signature)

Attorney or Party without attorney

Type or print name of ☐ Party without attorney

☐ Plaintiff/Petitioner ☐ Defendant/Respondent/Contestant

☐ Attorney for (Signature)

Attorney or Party without attorney

IT IS SO ORDERED:

DATE:

JUDGE OF THE SUPERIOR COURT OF SAN MATEO COUNTY

1 *Jennifer Osbelt, v. David D. McDonald, Donna K. McDonald, et al.*
 2 *San Mateo Superior Court CIV 463528*

3 **PROOF OF SERVICE**

4 I am employed in San Mateo County, which is where service of the document(s) referred to
 5 below occurred. I am over the age of 18 and not a party to the within action. My business address is
 6 Cotchett, Pitre & McCarthy, San Francisco Airport Center, 840 Malcolm Road, Suite 200, Burlingame,
 7 California 94010. I am readily familiar with Cotchett, Pitre & McCarthy's practices for the service of
 8 documents. On this date, I served a true copy of the following document(s) in the manner listed below:

9 **STIPULATION AND ORDER TO APPROPRIATE DISPUTE RESOLUTION**


10 **XXX BY MAIL:** I am readily familiar with this firm's practice for collection and processing of
 11 correspondence for mailing. Following that practice, I placed a true copy of the aforementioned
 12 document(s) in a sealed envelope, addressed to each addressee, respectively, as specified below.
 13 The envelope was placed in the mail at my business address, with postage thereon fully prepaid,
 14 for deposit with the United States Postal Service on that same day in the ordinary course of
 15 business.

16 William J. Goines
 17 Karen Rosenthal
 18 Cindy Hamilton
 19 **GREENBERG TRAURIG, LLP**
 20 1900 University Avenue, Fifth Floor
 21 East Palo Alto, CA 94303
 22 Tel.: (650) 328-8500
 23 Fax: (650) 328-8508

24 **BY HAND DELIVERY:** I am readily familiar with this firm's practice for causing documents to
 25 be served by hand delivery. Following that practice, I caused the sealed envelope containing the
 26 aforementioned document(s) to be hand delivered to the addressee(s) specified below.

27 **BY OVERNIGHT COURIER SERVICE:** I am readily familiar with this firm's practice for
 28 causing documents to be served by overnight courier. Following that practice, I caused the
 sealed envelope containing the aforementioned document(s) to be delivered via overnight courier
 service to the addressee(s) specified below:

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is
 true and correct. Executed at Burlingame, California, on November 6, 2007.


 Linda A. Clark



RECYCLED PAPER MADE FROM 30% POST CONSUMER CONTENT

1 JOSEPH C. COTCHETT (#168009)
ARA R. JABAGCHOURIAN (#205777)
2 SEAN E. PONIST (#204712)
COTCHETT, PITRE & McCARTHY
3 San Francisco Airport Office Center
840 Malcolm Road, Suite 200
4 Burlingame, CA 94010
Telephone: (650) 697-6000
5 Facsimile: (650) 697-0577
6 Attorneys for Plaintiff

ENDORSED FILED
SAN MATEO COUNTY

DEC - 4 2007

Clerk of the Superior Court
By M. MARLOWE
DEPUTY CLERK

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN MATEO**

10
11 JENNIFER OSBELT,

12 Plaintiff,

13 v.

14 DAVID D. McDONALD, DONNA K.
MCDONALD, and DOES 1-10, inclusive,

15 Defendants.

CASE NO. CIV 463528

PLAINTIFF'S EX PARTE
APPLICATION FOR AN ORDER
GRANTING LEAVE TO AMEND
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF SEAN E. PONIST

Date: December 4, 2007
Time: 2:00 p.m.
Dept:

Trial: May 12, 2008

16
17
18 DAVID D. McDONALD; DONNA K.
McDONALD; NATIONAL EXPERT
19 WITNESS NETWORK, a California Limited
Liability Company, TECHNOLOGY CLE, a
20 California Limited Liability Company,

21 Cross-Complainants,

22 v.

23 JENNIFER OSBELT, individually and doing
business as PALO ALTO TECHNICAL, and
24 ROES 1-10, inclusive,

25 Cross-Defendants.
26
27
28

EX PARTE APPLICATION

Plaintiff Jennifer Osbelt, through her counsel, hereby applies ex parte for an order granting leave to file a First Amended Complaint. The amended complaint will make the following changes to the existing complaint on file:

1. Adding a National Expert Witness Network, LLC ("NEWN") as a defendant to the caption page of the First Amended Complaint ("FAC") and setting forth its involvement in the body of the complaint (FAC, at 4:18-21, ¶ 22; 5:11, ¶ 25);

2. Adding a Seventh Cause of Action for Corporate Waste, an Eighth Cause of Action for Abuse of Control, a Ninth Cause of Action for Conversion, a Tenth Cause of Action for Cancellation of Instrument/Restitution Based on Rescission, an Eleventh Cause of Action for Unjust Enrichment, and Twelfth Cause of Action for Alter-Ego to the Caption page of FAC as well as the body of the amended complaint (FAC, at 14:23- 21:5, ¶¶ 80-111);

3. Adding additional facts which transpired or were learned through discovery after the filing of the original complaint as well as clarifying Plaintiff's activities immediately after acceptance of McDonald's and/or NEWN's offer (FAC, at 8:21-9:47, ¶¶ 43-47; 4:21, ¶ 22; 5:1, ¶ 24; 5:1, ¶ 24);

4. Modifying the First Cause of Action for Breach of Contract to reflect the addition of NEWN as a defendant and renumbering paragraph numbers and references thereto based on previous changes to the complaint (FAC, at 9:20-10:53, ¶¶ 48-53);

5. Modifying titles to the Second, Third, Fourth, Fifth and Sixth Causes of Action to clarify to which defendants the causes of action apply as well as renumbering the paragraph numbers and references thereto based on previous changes to the complaint (FAC, at 10:13-14:22, ¶¶ 54-79);

6. Attaching as Exhibit T to the amended complaint a copy of correspondence dated November 15, 2007, as described in paragraph 95 of the complaint (FAC, at 17:27-18:2); and,

7. Adding a claim for past and future profits to the prayer for relief (FAC, at 21:16, ¶ d).

8. Correcting syntactical and grammatical errors contained in the original complaint.

1 A copy of the proposed First Amended Complaint is attached as Exhibit A to Stipulation
2 and [Proposed] Order filed herewith. Plaintiff requests that the proposed First Amended
3 Complaint be deemed to be the amended pleading and that it be deemed filed as of the date of the
4 Court's execution of this Stipulation and [Proposed] Order and that Plaintiff shall serve all
5 Parties within 14 (fourteen) days thereafter with a copy of the amended pleading.

6 This application is made on the grounds that good cause exists for the amendment, that
7 the application is timely, and that no prejudice will result in the amendment. The ex parte
8 application is based upon this application, the memorandum of points and authorities, declaration
9 of Sean E. Ponist, and the Stipulation and [Proposed] Order filed herewith, and upon such other
10 evidence, oral or documentary, as may be introduced at the hearing of this application.

11
12 Dated: December 4, 2007

COTCHETT, PITRE & McCARTHY

13
14 By: 

15 SEAN E. PONIST
16 Attorneys for Plaintiff
17
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28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Jennifer Osbelt (hereinafter "Plaintiff"), seeks permission from the Court to amend her complaint to include National Expert Witness Network, LLC ("NEWN") as a Doe defendant, to add six additional causes of action against the two individual defendants previously named and to add a claim for lost profits to Plaintiff's prayer for relief. Defendants have stipulated to the filing of this First Amended Complaint.

Plaintiff respectfully submits that leave to amend is appropriate given circumstances of this case and California's liberal policy allowing amendments to pleadings. *Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 939; *Berman v. Bromberg* (1997) 56 Cal.App.4th 936, 945. Absent leave to amend, Plaintiff will be deprived of alleging meritorious claims. The motion to amend is timely, and based on information recently revealed through discovery and events which transpired after the filing of the original complaint and, as such, has been timely filed. There is no prejudice to Defendants if an amended Complaint is filed, nor is there any risk of delay in this action. *See Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048. Moreover, Defendants do not oppose the filing of this First Amended Complaint. Accordingly, Plaintiff respectfully requests that the Court grant the Motion to Amend Complaint.

II. PROCEDURAL AND FACTUAL BACKGROUND

The original complaint in this action was filed on June 5, 2007, by Plaintiff's initial counsel, Bergeson, LLP. At the time, the primary facts alleged and known to Plaintiff and her counsel concerned Defendant David and Donna McDonald's breach of an agreement to purchase her interest in NEWN for approximately \$1.8 million as well as certain acts or omissions by Defendants related thereto. Thus, the original complaint alleged causes of action for breach of contract, breach of fiduciary duty, accounting, slander per se, and violations of the Beverly-Killea Limited Liability Company Act against David and Donna McDonald.

On October 17, 2007, Plaintiff's counsel, Cotchett, Pitre & McCarthy, took the deposition of David McDonald. My office received a copy of the transcript of the deposition on October 31, 2007, and has just recently completed a review of the transcript. At his deposition, Mr.

1 McDonald revealed information indicating that his offer to purchase Plaintiff's interest in the
2 National Expert Witness Network ("NEWN") may have not only been on his own behalf or that
3 of his wife, but on behalf of NEWN as well. As such, Plaintiff's acceptance bound not only the
4 McDonalds but NEWN as well.

5 Mr. McDonald further revealed at his deposition information indicating that he and
6 Donna McDonald may have engaged in self-dealing, corporate waste and abuse of control of
7 NEWN and Technology Continuing Legal Education ("TCLE") as evidenced by: (a) their
8 causing NEWN to enter into self-serving "consulting" agreements with themselves which pay the
9 McDonalds hundreds of thousands of dollars for performing bogus services; (b) their causing
10 NEWN to purportedly become indebted to the McDonalds for hundreds of thousands of dollars;
11 (c) their conversion and waste of NEWN's assets and profits to pay personal expenses, including
12 hundreds of thousands of dollars spent on their private litigation expenses as well as tens of
13 thousands of dollars in home improvement and maintenance expenses; (d) their making
14 unwarranted capital calls in bad faith in an effort to dilute Plaintiff's interest in NEWN while
15 increasing their own interest; (e) their failure to observe corporate formalities and use of the
16 company for their own personal benefit; and, (f) their entering into self-interested transactions
17 with NEWN and TCLE without the approval or even consultation of any disinterested members
18 or managers. Additionally, on October 30, 2007, David and Donna McDonald, without the input
19 of all members and managers, including Plaintiff, or even the opportunity for them to provide
20 input, unilaterally purported to order another capital call in violation of the terms and conditions
21 of the operating agreement. Like the previous capital call, this was not in good faith and done to
22 better the McDonalds' interest in NEWN, while diluting Osbelt's.

23 The proposed First Amended Complaint is based on the foregoing events and information
24 which only recently transpired or has only recently been discovered. The First Amended
25 Complaint seeks to include NEWN as a Defendant, and alleges six new causes of action against
26 David and Donna McDonald for Corporate Waste, Abuse of Control, Conversion, Cancellation
27 of Instrument, Unjust Enrichment, and Alter Ego Liability, and adds a claim for lost profits.
28

1 Defense counsel does not oppose the filing of the proposed First Amended Complaint. Based on
2 the foregoing facts and circumstances, the amendment is appropriate.

3 **III. LEGAL ARGUMENT**

4 "The court, may in furtherance of justice, and on any terms as may be proper, allow a
5 party to amend any pleading ..." Code of Civ. Proc. § 473(a)(1). California judicial policy favors
6 resolution of all disputed matters between all concerned parties in the same lawsuit. Weil &
7 Brown, *California Practice Guide -- Civil Procedure Before Trial* (TRG 2007) ¶6:638. "Thus,
8 the court's discretion will usually be exercised *liberally* to *permit* amendment of the pleadings."
9 *Id.* (emphasis in original); see also, *Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 239. By
10 permitting Plaintiff to amend her complaint, California's judicial policy will be furthered by
11 having all concerned parties before the court and all meritorious claims adjudicated in one action.

12 Indeed, the policy favoring amendment is so strong that it is a rare case in which denial of
13 leave to amend can be justified: "If the motion to amend is timely made and the granting of the
14 motion will not prejudice the opposing party, it is error to refuse permission to amend and where
15 the refusal also results in a party being deprived of the right to assert a meritorious cause of
16 action or a meritorious defense, it is not only error but an abuse of discretion." *Morgan v.*
17 *Superior Court* (1959) 172 Cal.App.2d 527, 530; *Mabie v. Hyatt* (1998) 61 Cal.App.4th 581,
18 596.

19 Moreover, California's liberal policy favoring amendment applies "at any stage of the
20 proceedings, up to and including trial," absent prejudice to the adverse party. *Atkinson v. Elk*
21 *Corp.* (2003) 109 Cal.App.4th 739, 761. As discussed above, Plaintiff's request for relief at this
22 stage is timely, filed shortly after obtaining and reviewing the transcript from Mr. McDonald's
23 deposition. There is no prejudice to Defendants if an amended complaint is filed, nor is there any
24 risk of delay in this action. See *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d
25 1045, 1048.

26 Plaintiff brings this motion as a result of information recently obtained from the
27 deposition of Mr. McDonald as well as recent actions undertaken by him. See Ponist Decl., ¶¶ 3-
28 6. As set forth more fully in the attached declaration, Plaintiff discovered at Mr. McDonald's

1 recent deposition that her claim for breach of contract may involve NEWN in addition to the
 2 previous named defendants. *See* Ponist Decl., ¶ 4. Further, at that same deposition Plaintiff
 3 learned David and Donna McDonald may have engaged in self-dealing, corporate waste and
 4 abuse of control; thus, necessitating the need to add the new causes of action. *See* Ponist Decl., ¶
 5 5. Additionally, in the last month, the McDonalds have taken action in an attempt to dilute
 6 Plaintiff's interest in NEWN which has also necessitated the need to amend the complaint. *See*
 7 Ponist Decl., ¶ 6.

8 Trial is not set in this matter until May 12, 2007, and the amendment does not require any
 9 additional discovery beyond that previously contemplated. To the contrary, the witnesses with
 10 information supporting Plaintiff's proposed amended claims are the same as those with
 11 information supporting the prior claims. Additionally, NEWN is operated and controlled by the
 12 previously named defendants; thus, the amendment to add NEWN as a defendant would not
 13 prejudice it or require delay.

14 Lastly, Defendants do not oppose the filing of this First Amended Complaint and have
 15 stipulated to its filing. *See* Ponist Decl., ¶¶ 8, 9.

16 **IV. CONCLUSION**

17 For the reasons set forth above, Plaintiff respectfully requests that the Court grant the
 18 motion for leave to file a First Amended Complaint.

19
 20 Dated: December 4, 2007

COTCHETT, PITRE & McCARTHY

21
 22
 23 By: 

24 SEAN E. PONIST
 Attorneys for Plaintiff

DECLARATION OF SEAN E. PONIST

I, SEAN E. PONIST, declare:

1. I am an attorney at law, duly licensed to practice before this Court, and am associated with the law firm of Cotchett Pitre & McCarthy, counsel for Plaintiff Jennifer Osbelt in this action. I have personal knowledge of the matters stated herein and if called as a witness, I could and would competently testify to the following. I submit this declaration in support of Plaintiff Motion for Leave to File a First Amended Complaint. A copy of the proposed First Amended Complaint is attached hereto as Exhibit A to the Stipulation and [Proposed] Order.

2. The original complaint in this action was filed on June 5, 2007 by Plaintiff's initial counsel, Bergeson, LLP. It alleges causes of action for breach of contract, breach of fiduciary duty, accounting, slander per se, and violations of the Beverly-Killea Limited Liability Company Act against David and Donna McDonald.

3. My office took the deposition of David McDonald on October 17, 2007, received a copy of the transcript of the deposition on October 31, 2007, and has just recently completed a review of the transcript.

4. At this deposition, Mr. McDonald revealed information indicating that his offer to purchase Plaintiff's interest in the "NEWN" may have not only been on his own behalf or that of his wife, but on behalf of NEWN as well. As such, Plaintiff's acceptance bound not only McDonalds but NEWN as well. Therefore, liability for breach of the agreement to purchase Plaintiff's interest may be had by the McDonalds, NEWN or both.

5. At this deposition, Mr. McDonald further revealed information indicating that he and Donna McDonald may have engaged in self-dealing, corporate waste and abuse of control of NEWN and Technology Continuing Legal Education ("TCLE") as evidenced by: (a) their causing NEWN to enter into self-serving "consulting" agreements with themselves which pay the McDonalds hundreds of thousands of dollars for performing bogus services; (b) their causing NEWN to purportedly become indebted to the McDonalds for hundreds of thousands of dollars; (c) their conversion and waste of NEWN's assets and profits to pay personal expenses, including hundreds of thousands of dollars spent on their private litigation expenses as well as tens of

1 thousands of dollars in home improvement and maintenance expenses; (d) their making
2 unwarranted capital calls in bad faith in an effort to dilute Plaintiff's interest in NEWN while
3 increasing their own interest; (e) their failure to observe corporate formalities and use of the
4 company for their own personal benefit; and, (f) their entering into self-interested transactions
5 with NEWN and TCLE without the approval or even consultation of any disinterested members
6 or managers.

7 6. On October 30, 2007, David and Donna McDonald, without the input of all
8 members and managers, including Plaintiff, or even the opportunity for them to provide input,
9 unilaterally purported to order another capital call in violation of the terms and conditions of the
10 operating agreement.

11 7. Based on this new testimony and evidence, good cause exists to grant Plaintiff's
12 motion to amend her complaint to add a cause of action for breach of contract against NEWN
13 and causes of action for corporate waste, abuse of control, conversion, cancellation of
14 instrument/restitution based on rescission, unjust enrichment and alter-ego liability against David
15 and Donna McDonald as well as a claim for lost profits. This motion is being brought at the
16 earliest opportunity, just after Plaintiff obtained and reviewed the deposition transcripts of Mr.
17 McDonald, and could not have been filed earlier. Further, there is no prejudice to NEWN or the
18 McDonalds with trial not set until May 12, 2008. The amendment will not require discovery
19 beyond that previously contemplated. To the contrary, all the witnesses relevant to the additional
20 claims are the same as those relevant to the existing claims.

21 8. On November 27, 2007, I spoke to Cindy Hamilton of Greenberg Traurig, counsel
22 for Defendants, who indicated that they would not oppose the filing of the amended complaint,
23 attached as Exhibit A to the Stipulation and [Proposed] Order. Her address and phone number is
24 Greenberg Traurig, LLP, 1900 University Avenue, Fifth Floor, East Palo Alto, CA 94303, (650)
25 328-8505.

26 9. On November 30, 2007, Ms. Hamilton executed and returned the Stipulation and
27 [Proposed] Order Granting Leave for Plaintiff to File a First Amended Complaint which is being
28 presented with this application and other moving papers.

10. On December 3, 2007 I left a voice message for Ms. Hamilton indicating that I would make application for an order granting leave to amend Plaintiff's complaint and present the Stipulation and [Proposed] Order along with the First Amended Complaint ex parte at 2:00 p.m. December 4, 2007 before the Law and Motion Department. I also faxed a copy confirming this notice, a copy of which is attached hereto as Exhibit A. Ms. Hamilton previously indicated that she would not be appearing as Defendants did not oppose the filing of Plaintiff's First Amended Complaint.

11. In the event the motion is granted, Plaintiff requests that the First Amended Complaint, attached as Exhibit A to the Stipulation and [Proposed] Order, be deemed to be the amended pleading and that it be deemed filed and that Plaintiff shall serve all Parties within 14 (fourteen) days thereafter with a copy of the amended pleading.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 4th day of December 2007, at Burlingame, California.

~~SEAN E. PONIST~~

EXHIBIT A

LAW OFFICES
COTCHETT, PITRE & MCCARTHY

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840 MALCOLM ROAD
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TELEPHONE (650) 697-6000
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NEW YORK, NY 10017
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December 3, 2007

VIA FAX: 650-328-8508

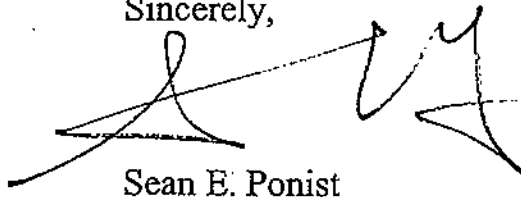
Cindy Hamilton
GREENBERG TRAURIG, LLP
1900 University Avenue, Fifth Floor
East Palo Alto CA 94303

Re: *Osbelt v. McDonald, et al.*, Case No. CIV 463528

Dear Cindy:

Per my voice message left earlier this morning, please be advised that I will present the Stipulation and [Proposed] Order along with the First Amended Complaint ex parte at 2:00 p.m. tomorrow before the Law and Motion Department.

Sincerely,



Sean E. Ponist

Attach.

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO 3410
CONNECTION TEL 3288508p634
SUBADDRESS
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LAW OFFICES

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840 Malcolm Rd., Suite 200

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Telephone: 650/697-6000

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692-3606 ♦ 692-1112

DATE: **December 3, 2007**

PAGES: **2 (including this page)**

TO: **CINDY HAMILTON 650-328-8508**
Greenberg Traurig

FROM: **SEAN E. PONIST**

RE: **Osbelt v. McDonald, et al.**

COMMENTS: **Please see attached.**

ORIGINAL TO FOLLOW: **Fax only**

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jcotchett@cpmlegal.com

ARA R. JABAGCHOURIAN (205777)
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Attorneys for Plaintiff Jennifer Osbelt

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF SAN MATEO**

JENNIFER OSBELT,

Plaintiff,

v.

DAVID D. MCDONALD, DONNA K.
 MCDONALD, and DOES 1-10, inclusive,

Defendants.

DAVID D. McDONALD; DONNA K.
 McDONALD; NATIONAL EXPERT
 WITNESS NETWORK, a California Limited
 Liability Company; TECHNOLOGY CLE, a
 California Limited Liability Company,

Cross-Complainants,

v.

JENNIFER OSBELT, individually and doing
 business as PALO ALTO TECHNICAL, and
 ROES 1-10, inclusive,

Cross-Defendants.

Case No. CIV463528

FIRST AMENDED COMPLAINT FOR:

- 1) **BREACH OF CONTRACT:
 AGREEMENT OF SALE;**
- 2) **BREACH OF CONTRACT:
 OPERATING AGREEMENT;**
- 3) **BREACH OF FIDUCIARY DUTY;**
- 4) **ACCOUNTING;**
- 5) **SLANDER PER SE;**
- 6) **VIOLATIONS OF THE
 BEVERLY-KILLEA LIMITED
 LIABILITY COMPANY ACT
 §§ 17058, 17106;**
- 7) **CORPORATE WASTE;**
- 8) **ABUSE OF CONTROL;**
- 9) **CONVERSION;**
- 10) **CANCELLATION OF
 INSTRUMENT/RESTITUTION
 BASED ON RESCISSION;**
- 11) **UNJUST ENRICHMENT; AND**
- 12) **ALTER-EGO LIABILITY.**

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1	TWELFTH CAUSE OF ACTION	
2	(Alter Ego Liability Against Defendants David McDonald and	
	Donna McDonald)	20
3	PRAYER	21
4	JURY DEMAND	22

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1 For her Complaint, plaintiff Jennifer Osbelt ("Osbelt") alleges as follows:

2 **I. NATURE OF THE ACTION**

3 1. This action arises out of breach of a written Operating Agreement and Articles of
4 Organization (the "Operating Agreement") dated as of May 13, 2004 among David D.
5 McDonald, his wife Donna K. McDonald (collectively, the "McDonalds") and Osbelt related to
6 National Expert Witness Network, LLC ("NEWN"). Pursuant to the Operating Agreement,
7 Osbelt owns 25% of NEWN while the McDonalds own the remaining 75% in equal shares.

8 2. In the early part of 2007, Osbelt raised with the McDonalds various questions
9 related to a purported loan of \$210,000 by the McDonalds to NEWN, which the McDonalds have
10 refused to satisfactorily answer. In addition, Osbelt learned that the McDonalds had provided
11 false information to NEWN's accountants, causing them to prepare and file false income tax
12 returns on behalf of NEWN and certain tax schedules related to Osbelt.

13 3. In order to ascertain answers to her questions, Osbelt repeatedly requested access
14 to NEWN's books and records. Despite Osbelt's right to such access under the Operating
15 Agreement and under California statute, the McDonalds have refused Osbelt access to NEWN's
16 books and records.

17 4. In addition, the McDonalds have excluded Osbelt from participating in the
18 management of NEWN, and have informed NEWN customers that Osbelt is leaving the expert
19 witness business and NEWN "to get married and have babies."

20 5. On March 26, 2007, David McDonald, on behalf of NEWN, offered to purchase
21 Osbelt's interest in NEWN for more than \$1.8 million, an offer which Osbelt accepted.

22 6. Despite numerous discussions and demands regarding performance, NEWN
23 and/or the McDonalds have failed to perform under the agreement to purchase Osbelt's interest in
24 NEWN and have continued to breach their fiduciary obligations and other obligations under the
25 Operating Agreement and the Beverly-Killea Limited Liability Company Act.

26 7. This lawsuit follows.
27
28

II. THE PARTIES

8. Plaintiff Osbelt is an individual residing in Redwood Shores and is a member of National Expert Witness Network, LLC. Osbelt has over 10 years of high tech industry experience, with a focus on cable and wireless networking and security, web development, and client/server technology. She is familiar with the technologies applied to the Internet and Intranet networks, cable and wireless networking and security, LAN/WAN infrastructure, client/server applications, relational database management systems, network performance management, and eBusiness technologies. Osbelt's recent work has been in providing expert witnesses and case management services to the legal profession in areas of high-technology.

9. Defendant National Expert Witness Network, LLC ("NEWN") is a California Limited Liability Company with its principal place of business at One Lagoon Drive, Suite 140 Redwood City, CA 94065. NEWN assists attorneys by providing a network of experts and consultants in high technology disciplines for intellectual property litigation.

10. Defendant David McDonald is an individual residing at 15309 Northlake Road, Magalia, CA 95954. David McDonald is a Member of NEWN.

11. Defendant Donna McDonald, David McDonald's wife, is an individual residing at 15309 Northlake Road, Magalia, CA 95954. Donna McDonald is a Member of NEWN.

12. Osbelt does not know the true names and capacities, whether individual, partnership, corporate, associate, or otherwise, of defendants Does 1 through 10, inclusive, and on that basis designates said defendants herein by such fictitious names. As the true names and capacities of defendants Does 1 through 10, inclusive, or any of them, become known, Osbelt will seek leave to amend this Complaint to state their true names and capacities. Osbelt is informed and believes, and on that basis alleges, that each of the defendants designated herein as Does 1 through 10, inclusive, is in some way liable, responsible or indebted to Osbelt in connection with the events and/or transactions referred to in this Complaint.

13. Osbelt is informed and believes, and on that basis alleges, that except where otherwise explicitly alleged, each of the defendants, including Does 1 through 10, inclusive, is, and at all relevant times herein mentioned was, the agent, partner, joint venturer, employee,

and/or conspirator of the remaining defendants, and is, and at all relevant times herein mentioned was, in performing and failing to perform the acts and conduct hereinafter alleged, acting within the course and scope of such agency, partnership, joint venture, employment, and/or conspiracy. Osbelt is further informed and believes, and on that basis alleges, that the acts and conduct of each of the defendants were known to, and authorized and ratified by, the remaining defendants, and that each of the defendants is legally responsible for the conduct and damages herein alleged.

III. JURISDICTION AND VENUE

14. This Court has jurisdiction of this matter pursuant to California Code of Civil Procedure ("CCP") Section 410.10. Each of the defendants reside within the state.

15. Venue is proper in this judicial district pursuant to CCP § 395 because the contract at issue was made in, or is to be performed, or the breach has occurred, in this county. The amount in controversy exceeds the jurisdictional minimum amount of this Court.

IV. FACTUAL ALLEGATIONS

16. On or about May 13, 2004, Osbelt and the McDonalds entered into an Operating Agreement and Articles of Organization (the "Operating Agreement"). A copy of the Operating Agreement is attached as Exhibit A. Pursuant to the Operating Agreement, Osbelt is a 25% owner of NEWN, and the McDonalds each own 37.5% of NEWN.

17. The authority of members to participate in the management of NEWN is set forth in Section 5 of the Operating Agreement. Pursuant to Section 5 of the Operating Agreement, each of the members "will participate in the management of the Company affairs ... and ... have exclusive authority to manage and conduct all the business of the Company, with all rights, powers and authority that are conferred by law or are necessary, convenient or appropriate for the managing of the Company's business" (Ex. A, § 5.)

18. Pursuant to Section 6.5 of the Operating Agreement, NEWN's books and records are to be maintained at its principal place of business and "[a]ll Members ... have the right on reasonable notice to the Company to ... inspect and ... copy the books and records of the Company" (Ex. A, § 6.5.)

1 19. In the event of a so-called "Triggering Event," the "Company and other Members
2 shall have the option to purchase the Membership Interest in the Company of such Member ... at
3 the price and on the terms provided in Section 8.8" of the Operating Agreement. (Ex. A, § 1.38.)

4 20. In late March 2007, Osbelt became aware of a purported loan from the
5 McDonald's to NEWN in an amount of \$210,000 ostensibly made in 2003. To Osbelt's
6 knowledge, the loan had not been reflected in NEWN's books and records at any time prior to
7 2007, and Osbelt requested an explanation from the McDonalds and documentary evidence of
8 the loan. The McDonalds refused to provide a satisfactory response to Osbelt's inquiries.

9 21. On March 26, 2007, David McDonald sent Osbelt an e-mail complaining about
10 Osbelt's inquiries concerning the loan. He also stated that Osbelt's "lack of trust [in the
11 McDonalds] is insulting to us completely unwarranted and frankly unacceptable. I think that it is
12 a good idea for you to move on." McDonald then went on to explain to Osbelt the contractual
13 procedure pursuant to the Operating Agreement for the McDonalds to purchase Osbelt's interest
14 ("The Company must determine that we wish to purchase membership shares; we do."), and the
15 calculation of the purchase price. McDonald calculated the purchase price of Osbelt's interest at
16 NEWN as \$1,886,063.80 and demanded that Osbelt accept or reject the offer that same day. A
17 copy of David McDonald's e-mail dated March 26, 2007 is attached as Exhibit B.

18 22. On March 26, 2007, and as requested by David McDonald, Osbelt responded to
19 McDonalds' and/or NEWN's offer by e-mail stating, in pertinent part: "I will take your deal ...
20 [g]o ahead and draw up the papers." A copy of Osbelt's e-mail dated March 26, 2007 is attached
21 as Exhibit C. On April 3, 2007, Osbelt left to get married and celebrate their union in Hawaii.

22 23. While in Hawaii, Osbelt was contacted by her tax preparer. He advised her that,
23 according to the tax forms provided by NEWN, she owed the IRS an unexpected amount of
24 taxes. Osbelt requested from her tax preparer a copy of the Schedule K-1s, which reflect a
25 member's purported income from a limited liability corporation, submitted by NEWN. Osbelt
26 immediately realized the information on the schedules was false and attributed substantially more
27 of NEWN's annual taxable income to her than was proper under the Operating Agreement.
28 Osbelt's inquiries to the McDonalds concerning the discrepancies were rebuffed.

1 24. On her return from her wedding and celebration in Hawaii on April 17, 2007,
 2 Osbelt attempted to contact the McDonalds to discuss the false Schedule K-1s, but they refused to
 3 speak with her. On information and belief, the McDonalds also instructed NEWN's accountants
 4 not to discuss any of NEWN's financial affairs with Osbelt. Furthermore, Osbelt learned that the
 5 McDonalds had hired an individual named Tom Fisher to take over Osbelt's operational duties at
 6 NEWN. Finally, on information and belief, the McDonalds began informing NEWN clients that
 7 Osbelt has left NEWN and the expert witness business "to get married and have babies."

8 25. On or about April 20, 2007, Osbelt received a letter from US Bank advising her
 9 that NEWN was overdue on renewing its line of credit with US Bank, and requesting certain
 10 financial information from her to renew the NEWN Member's personal guarantees for the line of
 11 credit, despite the fact that the McDonalds and/or NEWN was purchasing Osbelt's interest in
 12 NEWN. A copy of US Bank's letter dated April 17, 2007, is attached as Exhibit D. By this time,
 13 NEWN's indebtedness to US Bank had grown to over \$260,000.

14 26. Concerned about the extent of NEWN's indebtedness and the McDonalds' refusal
 15 to provide details about the loan, Osbelt contacted US Bank and informed it that she would not
 16 sign as a guarantor until she had received details about the loan from the McDonalds.

17 27. On April 20, 2007, Osbelt sent David McDonald an e-mail in which she
 18 requested, inter alia, to be allowed to inspect and copy the "the past 4 years of books and records
 19 of [NEWN]. . . ." A copy of Osbelt's April 20, 2007 e-mail is attached as Exhibit E.

20 28. On May 5, 2007, David McDonald sent Chris Rodi ("Rodi"), Osbelt's husband, an
 21 e-mail stating that he had been notified by US Bank that it was calling in the loan. Attached "to
 22 the e-mail was a letter from David McDonald to Rodi. That same day, Rodi responded that
 23 Osbelt was unwilling to renew her personal guarantee to US Bank on behalf of NEWN and
 24 explained her reasoning therefor. He also explained that any purported capital call under the
 25 Operating Agreement would be premature and ineffective given the disparities that Osbelt had
 26 found in NEWN's financial records, including the false Schedule K-1s. A copy of David
 27 McDonald's e-mail dated May 5, 2007, the attached letter, and Rodi's response is attached as
 28 Exhibit F.

29. On May 8, 2007, David McDonald sent Osbelt an e-mail to which he attached a Notice of Default from US Bank to NEWN dated May 7, 2007. In his letter, McDonald purported to invoke the provisions of Section 3.1 of the Operating Agreement and requested that Osbelt contribute an amount of \$66,104.48 representing 25% of NEWN's indebtedness to US Bank by May 23, 2007. A copy of McDonald's e-mail dated May 8, 2007 and the US Bank notice dated May 7, 2007, are attached as Exhibit G.

30. That same day, May 8, 2007, and the next, May 9, 2007, Rodi, on behalf of Osbelt, sent two e-mails to David McDonald assuring McDonald that Osbelt wanted to comply fully with any obligation she had under the Operating Agreement but advising him that she was unable to do so given the discrepancy in NEWN's financial statements and the false Schedule K-1s, and that the purported invocation of Section 3.1 of the Operating Agreement was ineffective. A copy of Rodi's e-mails dated May 8 and 9, 2007 is attached as Exhibit H.

31. On May 10, 2007, David McDonald responded by e-mail to Rodi bluntly stating "Jennifer has 13 days left to provide the additional cash" By this time, it was clear that the McDonalds were intent on forcing Osbelt out of NEWN by any means possible. A copy of David McDonald's May 10, 2007 e-mail is attached as Exhibit I.

32. On May 17, 2007, Donald Gagliardi of Bergeson, LLP, on behalf of Osbelt, sent a letter to E. Thorn Rumberger ("Rumberger") of Greenberg Traurig, an attorney believed to represent the McDonalds, reiterating Osbelt's request for access to NEWN's books and records; reiterating Osbelt's position that the purported capital call was invalid; and suggesting that the parties work toward a negotiated settlement of the issues between them. A copy of Donald Gagliardi's letter of May 17, 2007 is attached as Exhibit J.

33. At Rumberger's request, attorneys for Osbelt attended a meeting at Rumberger's offices on May 18, 2007, to initiate a dialogue between the parties. At that meeting, counsel for Osbelt again reiterated that inspection of NEWN's books and records was a predicate to any resolution of the dispute between the parties. Counsel for the McDonalds undertook to schedule such inspection.

34. On May 21, 2007, and not having received a response from counsel for the McDonald's to the May 17 Gagliardi letter or to the requests made at the May 18 meeting, counsel for Osbelt sent another letter to Rumberger. Gagliardi concluded the letter by stating "[p]lease regard this letter as the final request by Osbelt for a full inspection of the complete books and records of NEWN" Gagliardi also provided a date for the inspection, May 24, 2007. A copy of Gagliardi's May 21, 2007, letter to Rumberger is attached as Exhibit K.

35. On May 22, 2007, Fred Adam ("Adam"), another attorney representing the McDonalds, responded to Gagliardi by e-mail. In his e-mail, Adam stated "the Magalia location [is] not an option [for the inspection] since the office is located in the home of [the McDonalds]." Adam went on to state that the McDonalds required an "express list of what was being requested." A copy of Adam's e-mail to Gagliardi dated May 22, 2007 is attached as Exhibit L.

36. Gagliardi responded by letter that same day, May 22, 2007. In his letter, Gagliardi rejected Adam's attempt to limit the inspection to certain specified documents, but provided a non-exclusive list of categories of records that Osbelt wished to inspect and copy. Gagliardi also pointed out that inasmuch as the McDonalds had improperly elected to maintain the books and records of NEWN in their home, it was inappropriate to use that fact as a reason for not allowing Osbelt access to the records. Gagliardi again stated that Osbelt wished to conduct the inspection on May 24, 2007. A copy of Gagliardi's May 22, 2007, letter to Adam is attached as Exhibit M.

37. On May 23, 2007, Adam sent an e-mail at 6:39 pm to counsel for Osbelt in which he stated: "[h]ope to get you a response to document request later tonight." A copy of Adam's email to Marc van Niekerk dated May 23, 2007, is attached as Exhibit N.

38. Later that evening, Van Niekerk sent Adam an e-mail at 8:06 pm noting that Osbelt had still not received confirmation that she would be allowed access to NEWN's books and records the next day, May 24, 2007, and requesting such confirmation. A copy of Van Niekerk's e-mail to Adam dated May 23, 2007, is attached as Exhibit O.

1 39. A few minutes later, Adam responded to Van Niekerk's e-mail stating "tomorrow
2 won't work due to too short notice for scheduling, but we are trying to schedule for Friday [May
3 25]." A copy of Adam's e-mail to Van Niekerk dated May 23, 2007, is attached as Exhibit P.

4 40. On May 24, 2007, counsel for the McDonalds sent a letter to Gagliardi
5 purportedly responding to Osbelt's requests for access to NEWN's books and records, but
6 advancing numerous spurious arguments why access was not possible. Again, Adam specifically
7 informed counsel that Osbelt would not be allowed to inspect the records where they are
8 maintained. Adam went on to state that "it is our client's sincere belief that the records and other
9 materials provided by our client to date, or already in Ms. Osbelt's possession, comply with your
10 client's document request" A copy of Adam's letter to Gagliardi dated May 24, 2007, is
11 attached as Exhibit Q.

12 41. Counsel for Osbelt responded to Adam by letter dated May 25, 2007, refuting
13 each of Adam's contentions. Counsel for Osbelt reiterated Osbelt's request for access to source
14 documents, as opposed to spreadsheets and tables prepared by the McDonalds. A copy of the
15 letter dated May 25, 2007, from Van Niekerk to Goines is attached as Exhibit R.

16 42. Five days later, on May 30, 2007, Goines responded to Van Niekerk's letter of
17 May 25, 2007. In his letter, Goines made it clear that the McDonalds would not be allowing
18 Osbelt access to the books and records of NEWN or allow Osbelt access to the books and records
19 where they are maintained. A copy of Goines' May 30, 2007, letter to Van Niekerk is attached as
20 Exhibit S.

21 43. After filing this litigation, Osbelt served discovery on the McDonalds on August
22 1, 2007. Osbelt's discovery requests included requests for the production of all books and
23 records, including, but not limited to, source documents. The McDonalds again refused to
24 produce those documents.

25 44. At the recent depositions of the McDonalds held October 17, 2007, and October
26 18, 2007, Osbelt again had requested production of all books and records, including, but not
27 limited to, source documents. Again, the McDonalds failed to produce these documents.

45. At the deposition of David McDonald, it came to light that on or about April of 2007, the McDonalds caused NEWN to enter into "consulting" agreements with themselves. Under these purported agreements, Donna McDonald provides bookkeeping "consulting" services to NEWN and David McDonald provides CEO "consulting" services to NEWN. Previously, Donna and David McDonald had performed these functions as members and managers of NEWN and had received compensation through profits shared by all members and managers. Now, through these self-serving "consulting" agreements, the McDonalds have paid themselves hundreds of thousands of dollars for their services.

46. On or about October 30, 2007, David McDonald, without the input of all members and managers, including Osbelt, or even the opportunity for them to provide input, unilaterally purported to order a capital call. The purported capital call did not comply with the terms and conditions of the Operating Agreement and was done for improper purpose. The McDonalds are using the capital call device in bad faith in order to better their majority position in the company, while diluting Osbelt's position.

47. The McDonalds, collectively majority members and managers of NEWN and TCLE, with a joint 75% interest in the companies, have repeatedly violated their duties and obligations to Osbelt, a minority member and manager of NEWN and TCLE. Further, they have reneged on their offer to purchase Osbelt's interest in NEWN and/or caused NEWN to renege, thereby breaching a legally, binding contract.

FIRST CAUSE OF ACTION

(Breach of Contract: Agreement of Sale Against All Defendants)

48. Osbelt incorporates by reference the allegations set forth above as though fully restated herein.

49. On or about March 26, 2007, David McDonald, on behalf of NEWN and/or his own behalf and that of his wife, Donna McDonald, offered to purchase Osbelt's interest in NEWN for a purchase price of \$1,886,063.80. McDonald specified that the offer was to be accepted or rejected that same day.

50. Osbelt accepted McDonald's offer that same day, March 26, 2007, as a consequence whereof a valid and enforceable agreement of sale of Osbelt's share in NEWN to the McDonalds and/or NEWN in exchange for payment by them to Osbelt of \$1,886,063.80 was created.

51. Osbelt is, and at all times, was ready, willing, and able to complete performance under the agreement.

52. Without justification and in breach of its obligations under the agreement, the McDonalds and/or NEWN have failed to make payment to Osbelt of the agreed upon purchase price of \$1,886,063.80 or any part thereof.

53. As a result of the McDonalds' and/or NEWN's breach of the Agreement, Osbelt has been damaged in an amount to be proven at trial, but in no event less than \$1,886,063.80, plus interest and costs of suit.

SECOND CAUSE OF ACTION

(Breach of Contract: Operating Agreement Against Defendants

David McDonald and Donna McDonald)

54. Osbelt incorporates by reference the allegations set forth above as though fully restated herein.

55. On or about May 13, 2004, Osbelt and the McDonalds entered into an Operating Agreement and Articles of Organization (the "Operating Agreement").

56. The authority of Members to participate in the management of NEWN is set forth in Section 5 of the Operating Agreement. Pursuant to Section 5 of the Operating Agreement, each of the Members "will participate in the management of the Company affairs...and... have exclusive authority to manage and conduct all the business of the Company, with all rights, powers and authority that are conferred by law or are necessary, convenient or appropriate for the managing of the Company's business" (Ex. A, § 5.)

57. Pursuant to Section 6.5 of the Operating Agreement, NEWN's books and records are to be maintained at its principal place of business and "[a]ll Members ... have the right on

1 reasonable notice to the Company to ... inspect and ... copy the books and records of the
2 Company" (Ex. A, § 6.5.)

3 58. Osbelt has performed all of her obligations under the Operating Agreement except
4 those obligations which have been waived or excused. Further, Osbelt is, and at all times, was
5 ready, willing, and able to complete performance under the Operating Agreement.

6 59. The McDonalds, without justification, have breached the Operating Agreement
7 by, inter alia:

8 59.1 Wrongfully excluding Osbelt from participating in management of
9 NEWN;

10 59.2 Failing to maintain the books and records at NEWN's principal place of
11 business in Redwood City;

12 59.3 Denying Osbelt access to NEWN's books and records for the purpose of
13 copying them, despite repeated requests therefor;

14 59.4 Causing the books and records of NEWN to reflect false allocation of
15 NEWN's profits to Osbelt;

16 59.5 Causing NEWN's accountants to prepare false financial statements on
17 behalf of NEWN;

18 59.6 Causing NEWN's accountants to prepare and file false income tax returns
19 on behalf of NEWN;

20 59.7 Failing to disclose interested transactions with NEWN;

21 59.8 Self-dealing with NEWN including, but not limited to: consulting
22 agreements, reimbursement of personal expenses and purported loans to
23 NEWN, all to the detriment of NEWN; and

24 59.9 Abusing their power as co-managers of NEWN by freezing out co-
25 manager Osbelt and making a capital call without the consent of all
26 members and co-managers of NEWN.
27
28

60. As a result of the McDonalds' breach of the Operating Agreement, Osbelt has been damaged in an amount to be proven at trial, but in no event less than \$1,886,063.80, plus interest and costs of suit.

THIRD CAUSE OF ACTION

(Breach of Fiduciary Duty Against Defendants David McDonald and Donna McDonald)

61. Osbelt incorporates by reference the allegations set forth above as though fully restated herein.

62. As Osbelt's fellow members in NEWN and as holders of the majority interest in NEWN, the McDonalds owed Osbelt fiduciary duties of loyalty, good faith, candor, and fair dealing.

63. The McDonalds have breached their fiduciary duties to Osbelt by:

63.1 Wrongfully excluding Osbelt from participating in management of NEWN;

63.2 Failing to maintain the books and records at NEWN's principal place of business in Redwood City;

63.3 Denying Osbelt access to NEWN's books and records for the purpose of copying them, despite repeated requests therefor;

63.4 Causing the books and records of NEWN to reflect false allocation of NEWN's profits to Osbelt;

63.5 Causing NEWN's accountants to prepare false financial statements on behalf of NEWN;

63.6 Causing NEWN's accountants to prepare and file false income tax returns on behalf of NEWN;

63.7 Failing to disclose interested transactions with NEWN;

63.8 Self-dealing with NEWN including, but not limited to: consulting agreements, reimbursement of personal expenses and purported loans to NEWN, all to the detriment of NEWN; and

1 63.9 Abusing their power as co-managers of NEWN by freezing out co-
2 manager Osbelt and making a capital call without the consent of all
3 members and co-managers of NEWN.

4 64. As a result of the McDonalds' breach of their fiduciary duties to Osbelt, Osbelt
5 has been damaged in an amount to be proven at trial.

6 **FOURTH CAUSE OF ACTION**

7 **(Accounting Against Defendants David McDonald and Donna McDonald)**

8 65. Osbelt incorporates by reference the allegations set forth above as though fully
9 restated herein.

10 66. As Osbelt's fellow members in NEWN and as holders of the majority interest in
11 NEWN, the McDonalds owed Osbelt fiduciary duties of loyalty, good faith, candor and fair
12 dealing.

13 67. The McDonald's have controlled the maintenance of NEWN's financial books and
14 records and have excluded Osbelt from access thereto.

15 68. Osbelt wishes to assign her membership interest in NEWN to the McDonalds
16 against payment by the McDonalds pursuant to the formula set forth in the Operating Agreement.

17 69. The payment due from the McDonalds is unknown and cannot be ascertained
18 without an accounting of the receipts and disbursements of all NEWN transactions.

19 70. The McDonalds have failed and refused, and continue to fail and refuse, to render
20 such an accounting.

21 71. The foregoing actions entitle Osbelt to an accounting against the McDonalds to
22 determine the purchase price of Osbelt's interest in NEWN.

23 **FIFTH CAUSE OF ACTION**

24 **(Slander Per Se Against Defendants David McDonald and Donna McDonald)**

25 72. Osbelt incorporates by reference the allegations set forth above as though fully
26 restated herein.

27 73. On information and belief, the McDonalds have been informing NEWN clients
28 that Osbelt has left NEWN and the expert witness business "to get married and have babies."

1 74. This statement by the McDonalds is false and known by the McDonalds to be
2 false and was uttered with malice.

3 75. This statement by the McDonalds is injurious to Osbelt's professional and/or
4 business reputation.

5 76. The foregoing entitles Osbelt to compensatory and punitive damages for which
6 the McDonalds are liable, according to proof.

7 SIXTH CAUSE OF ACTION

8 **(Violations of Beverly-Killea Limited Liability Company Act §§ 17058, 17106 Against**
9 **Defendants David McDonald and Donna McDonald)**

10 77. Osbelt incorporates by reference the allegations set forth above as though fully
11 restated herein:

12 78. The McDonalds have violated Sections 17058, 17106 of the Beverly-Killea
13 Limited Liability Company Act by:

14 78.1 Failing to maintain the books and records of NEWN as they
15 relate to the internal affairs of NEWN for the current and
16 past four fiscal years; and

17 78.2 Refusing to allow Osbelt to inspect and copy NEWN's
18 books and records despite repeated, reasonable and
19 appropriate requests.

79. The foregoing entitles Osbelt to an order pursuant to Section 17106(f) that the McDonalds provide Osbelt with the information and financial statements of NEWN and reasonable expenses, including attorneys fees, pursuant to Section 17106(g).

23 SEVENTH CAUSE OF ACTION

24 (Corporate Waste Against Defendants David McDonald and Donna McDonald)

25 80. Osbelt incorporates by reference the allegations set forth above as though fully
26 restated herein.

27 81. David and Donna McDonald, and each of them, wrongfully and intentionally
28 diverted NEWN's and TCLE's company assets for improper and unnecessary purposes, which

1 acts constitute corporate waste and gift. The McDonalds, joint majority members and managers
2 of NEWN and TCLE, had a duty not to permit corporate waste or to commit corporate waste
3 themselves.

4 82. The McDonalds have wrongfully and intentionally diverted NEWN's and TCLE's
5 company assets for their own, personal use. Diversion of company assets includes, but is not
6 limited to, improperly using company assets to pay personal litigation expenses, improperly
7 paying themselves improper and excessive "consulting" fees, and improperly using company
8 assets for personal expenses.

9 83. Most recently, the McDonalds have excluded Osbelt from management of the
10 companies and then proceeded to drain the company assets for their personal benefit.
11 Immediately after excluding Osbelt from management, The McDonalds caused NEWN to enter
12 into "consulting" agreements with themselves. Under the so-called "consulting" agreements,
13 Donna McDonald provides bookkeeping "consulting" services to NEWN and David McDonald
14 provides CEO "consulting" services to NEWN. Previously, the McDonalds did this same work
15 and received compensation through profits shared by the members. But, with Osbelt removed
16 from management, they now perform the same tasks as before, but receive hundreds of thousands
17 of dollars for their "consulting" services.

18 84. The conduct of Defendants David and Donna McDonald, and each of them, was
19 not in good faith, nor did the McDonalds make any judgment, in the exercise of good faith, that
20 based on the circumstances of the transactions and self-dealing, of which they were fully aware,
21 that their actions and omissions were worthwhile to NEWN and TCLE and in those companies
22 bests interests. Rather, their actions directly interfered with the business of NEWN and TCLE by
23 diverting corporate assets out of the companies.

24 85. The McDonalds, and each of them, aided and abetted, encouraged and rendered
25 substantial assistance to each other in accomplishing the wrongful conduct, acts and omissions
26 and wrongful goals complained of herein. In abiding and abetting and substantially assisting the
27 commission of these wrongful acts, each of the McDonalds realized that his or her conduct
28

1 would substantially assist the accomplishments of the wrongful conduct, wrongful goals, and
2 wrongdoing.

3 86. As a result of the McDonalds' wrongful conduct, and the wrongful conduct of
4 each of them, NEWN, TCLE and Osbelt have suffered and continue to suffer economic and non-
5 economic damages. NEWN, TCLE and Osbelt has also suffered other general and specific
6 damages, including, but not limited to, lost profits, unwarranted financial losses and expenses
7 and alleged dilution of interest in the companies. Osbelt is entitled to disgorgement of corporate
8 waste attributed to the McDonalds' wrongful actions and self-dealing and any compensation
9 wrongfully obtained by them thereby from expense payments, consulting fees, alleged dilution of
10 interest any other compensation that would not have been paid but for their wrongful conduct.

11 EIGHT CAUSE OF ACTION

12 (Abuse of Control Against Defendants David McDonald and Donna McDonald)

13 87. Osbelt incorporates by reference the allegations set forth above as though fully
14 restated herein.

15 88. The McDonalds dominated and controlled the business affairs of NEWN and
16 TCLE through their majority stock ownership, member and management positions, financial
17 dealings and otherwise. The McDonalds abused their control of these companies by acting
18 contrary to the companies' best interest and instead acting to further their own private financial
19 and personal interests.

20 89. The McDonalds, and each of them, knew or should have known that their acts and
21 omissions constituted a breach of duty and an abuse of control. Each Defendant further gave
22 substantial assistance to the other Defendant and in doing so aided and abetted the violations by
23 the other Defendant. Without such assistance and encouragement of one Defendant to another,
24 the wrongful acts could not have occurred.

25 90. In violation of their contractual and statutory duties, the McDonalds abused their
26 positions of control by entering into self-interested transactions without the approval or even the
27 consultation of any of NEWN's and TCLE's disinterested members or managers. These
28 transactions included, but were not limited to, causing NEWN and TCLE to pay the McDonalds

1 personal and home expenses, causing NEWN to become indebted to the McDonalds, causing
 2 NEWN to require unwarranted and improper capital calls, and causing TCLE to abandon patent
 3 claims against its interests.

4 91. As a result of the McDonalds' wrongful conduct, and the wrongful conduct of
 5 each of them, NEWN, TCLE and Osbelt have suffered and continue to suffer economic and non-
 6 economic damages. NEWN, TCLE and Osbelt have also suffered other general and specific
 7 damages, including, but not limited to, lost profits, unwarranted financial losses and expenses
 8 and alleged dilution of interest in the companies. Osbelt is entitled to disgorgement of corporate
 9 waste attributed to the McDonalds' wrongful actions and self-dealing and any compensation
 10 wrongfully obtained by the McDonalds thereby from expense payments, consulting fees, alleged
 11 dilution of interest and any other compensation that would not have been paid but for their
 12 wrongful conduct.

13 NINTH CAUSE OF ACTION

14 (Conversion Against Defendants David McDonald and Donna McDonald)

15 92. Osbelt incorporates by reference the allegations set forth above as though fully
 16 restated herein.

17 93. During all relevant times while Osbelt was a member of NEWN and TCLE, she
 18 was and still is entitled to a share of the profits of these companies.

19 94. Contrary to their contractual and statutory duties, the McDonalds wrongfully
 20 misappropriated and converted the assets of NEWN, TCLE and Osbelt for themselves. This
 21 conversion includes, but is not limited to, converting Osbelt's interest in NEWN into their own
 22 through unwarranted and improper capital calls, converting NEWN's and Osbelt's assets and
 23 profits into their own through excessive and improper "consulting" fees payable to themselves,
 24 converting NEWN's and Osbelt's assets into their own through false and improper debt
 25 obligations payable to themselves, converting NEWN, TCLE and Osbelt's assets into their own
 26 through wrongful and improper payment to themselves.

27 95. Osbelt has demanded the immediate return of these assets, but the McDonalds
 28 have failed and refused, and continue to fail and refuse, to return the assets to NEWN, TCLE and

1 Osbelt. A copy of Osbelt's written demand is attached to the First Amended Complaint as
 2 Exhibit T.

3 96. The McDonalds' conversion of these assets was with malice, oppression, and a
 4 willful and conscious disregard for the rights of Osbelt. The McDonalds misappropriated and
 5 converted company assets and funds for their personal use without any approval or consultation
 6 of Osbelt or any other disinterested member or manager of the companies. They acted with
 7 reckless indifference and willful and conscious disregard of any person who had an interest in the
 8 converted property and, particularly, the rights of Osbelt.

9 97. Further, after knowledge and notice of Osbelt's interest in the converted assets
 10 was given to the McDonalds, they failed and refused, and continue to fail and refuse, to return the
 11 assets. By reason of these acts, Osbelt has been oppressed and seeks punitive and exemplary
 12 damages.

13 98. In addition to exemplary and punitive damages, NEWN, TCLE and Osbelt have
 14 additionally suffered and continue to suffer economic and non-economic damages. NEWN,
 15 TCLE and Osbelt have also suffered other general and specific damages, including, but not
 16 limited to, lost profits, unwarranted financial losses and expenses and alleged dilution of interest
 17 in the companies. Osbelt is entitled to disgorgement of corporate waste attributed to the
 18 McDonalds' wrongful actions and self-dealing and any compensation wrongfully obtained from
 19 the McDonalds thereby from expense payments, consulting fees, alleged dilution of interest and
 20 any other compensation that would not have been paid but for their wrongful conduct.

21 TENTH CAUSE OF ACTION

22 **(Cancellation of Instrument/Restitution Based on Rescission Against Defendants David** 23 **McDonald and Donna McDonald)**

24 99. Osbelt incorporates by reference the allegations set forth above as though fully
 25 restated herein.

26 100. The McDonalds, as members and managers of NEWN and TCLE, caused NEWN
 27 and TCLE to enter into transactions with the McDonalds. The McDonalds had a financial
 28 interest in these transactions which conflicted with the best interests of NEWN, TCLE and,

1 minority member and manager, Osbelt. The McDonalds purportedly made loans to NEWN,
2 causing NEWN to be indebted to the McDonalds for hundreds of thousands of dollars. The
3 McDonalds also caused NEWN to enter into "consulting" agreements with themselves which
4 purport to require NEWN to pay the McDonalds hundreds of thousands of dollars. The
5 McDonalds further caused NEWN to make improper capital calls which have purported to dilute
6 Osbelt's interest in NEWN while increasing their own interest.

7 101. Despite their conflict of interest, the McDonalds failed to have a disinterested
8 member or manager review and/or approve these transactions and agreements and, in fact, none
9 of these agreements and transactions were approved by Osbelt or any other disinterested member
10 or manager of NEWN. Further, the McDonalds never allowed Osbelt or any other disinterested
11 member or manager of NEWN even an opportunity to vote on, approve, object or otherwise
12 provide input as to these agreements and transactions or otherwise provide input or object. In
13 fact, the McDonalds never even disclosed these agreements and transactions to Osbelt until well
14 after they were completed or not at all.

15 102. Osbelt hereby intends service of copies of the summons and this First Amended
16 Complaint as notice of rescission of the contracts and transactions.

17 103. The McDonalds, as majority members and managers, entered into these self-
18 serving contracts and transactions for the sole benefit of themselves and at the detriment of
19 NEWN, TCLE and Osbelt. These transactions are sham: the McDonalds entered into these
20 transactions and/or caused NEWN and TCLE to enter into the transactions to injure and defraud
21 Osbelt and the companies.

22 104. In addition to exemplary and punitive damages, NEWN, TCLE and Osbelt have
23 additionally suffered and continue to suffer economic and non-economic damages. NEWN,
24 TCLE and Osbelt have also suffered other general and specific damages, including, but not
25 limited to, lost profits, unwarranted financial losses and expenses, and alleged dilution of interest
26 in the companies. Osbelt is entitled to disgorgement of corporate waste attributed to the
27 McDonalds' wrongful actions and self-dealing and any compensation wrongfully obtained by the
28

McDonalds thereby from expense payments, consulting fees, alleged dilution of interest, and any other compensation that would not have been paid but for their wrongful conduct.

ELEVENTH CAUSE OF ACTION

(Unjust Enrichment Against Defendants David McDonald and Donna McDonald)

105. Osbelt incorporates by reference the allegations set forth above as though fully restated herein.

106. By their wrongful acts and omissions, the McDonalds, and each of them, have been unjustly enriched at the expense of and detriment to NEWN, TCLE and Osbelt who were meanwhile unjustly deprived.

107. Osbelt, on behalf of NEWN, TCLE and herself, seeks restitution from The McDonalds, and each of them, and seeks an order of this Court disgorging all improper profits, fees, payments, benefits and other compensations obtained by the McDonalds from their wrongful conduct and breaches of fiduciary duties.

TWELFTH CAUSE OF ACTION

(Alter Ego Liability Against Defendants David McDonald and Donna McDonald)

108. Osbelt incorporates by reference the allegations set forth above as though fully restated herein.

109. There exists, and at all times herein mentioned there existed, a unity of interest and ownership between the McDonalds and NEWN, such that any individuality and separateness between the McDonalds and NEWN ceased, and these limited liability companies are the alter ego of the McDonalds in that they wholly disregarded any of the obligations imposed upon them by the operating agreement and California Corporations law. The McDonalds dominated and controlled the business of NEWN, despite the rights of other Osbelt and other members of the company.

110. Adherence to the fiction of the separate existence of NEWN, as an entity distinct from the McDonalds, would permit an abuse of the limited liability company privilege and would sanction fraud or otherwise promote injustice as the McDonalds have run NEWN in bad faith with utter disregard to the Operating Agreement and the rights of Osbelt and the other members.

1 The McDonalds used the limited liability companies for their personal benefit and not for
2 company business, and, in doing so, acted to the detriment of NEWN and the other members.

3 111. To the extent that the trier of fact finds that NEWN, not the McDonalds, breached
4 the agreement to purchase Osbelt's interest in NEWN as alleged in Osbelt's First Cause of
5 Action, the McDonalds should be jointly and severally liable as alter-ego Defendants.

6 **PRAYER**

7 WHEREFORE, Osbelt prays for judgment jointly and severally against the McDonalds to
8 the First Cause of Action and against the McDonalds as to the remaining causes of action as
9 follows:

- 10 a. For damages according to proof at trial, but in no event less than
11 \$1,886,063.80;
12 b. For an accounting;
13 c. For an order pursuant to Section 17106(f) of the Beverly-Killea Limited
14 Liability Company Act;
15 d. For punitive damages as determined by a jury;
16 e. For past and future profits;
17 f. For pre-judgment interest at the legal rate;
18 g. For costs of suit, including attorneys' fees;
19 h. For such other and further relief as this Court deems just and proper.

20
21 Dated: November 30, 2007

COTCHETT, PITRE & McCARTHY

22
23 By: 

24 **SEAN E. PONIST**

Attorneys for Plaintiff Jennifer Osbelt

JURY DEMAND

Plaintiff demands trial by jury on all issues so triable.

DATED: November 30, 2007

COTCHETT, PITRE & McCARTHY

By



SEAN E. PONIST

Attorneys for Plaintiff Jennifer Osbelt



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7 Attorneys for Plaintiff Jennifer Osbelt

FILED
SAN MATEO COUNTY

DEC - 4 2007

Clerk of the Superior Court

By *[Signature]*
DEPUTY CLERK

8
9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN MATEO

12 JENNIFER OSBELT,

13 Plaintiff,

14 v.

15 DAVID D. MCDONALD, DONNA K.
16 MCDONALD, and DOES 1-10, inclusive,

17 Defendants.

Case No. CIV463528

STIPULATION AND ~~[PROPOSED]~~
ORDER GRANTING LEAVE FOR
PLAINTIFF TO FILE A FIRST
AMENDED COMPLAINT

18
19
20 DAVID D. McDONALD; DONNA K.
McDONALD; NATIONAL EXPERT
WITNESS NETWORK, a California
21 Limited Liability Company;
TECHNOLOGY CLE, a California Limited
22 Liability Company,

23 Cross-Complainants,

24 v.

25 JENNIFER OSBELT, individually and
doing business as PALO ALTO
26 TECHNICAL, and ROES 1-10, inclusive,

27 Cross-Defendants.

28
STIPULATION AND ~~[PROPOSED]~~ ORDER GRANTING LEAVE FOR PLAINTIFF TO FILE A FIRST
AMENDED COMPLAINT

STIPULATION

WHEREAS, Plaintiff previously filed a complaint in this action on June 5, 2007, and Defendant answered on July 18, 2007.

WHEREAS, Plaintiff now seeks to file an amended complaint which will make the following changes to the existing complaint on file:

- Adding National Expert Witness Network ("NEWN") as a defendant;
- Adding a Seventh Cause of Action for Corporate Waste, an Eighth Cause of Action for Abuse of Control, a Ninth Cause of Action for Conversion, a Tenth Cause of Action for Cancellation of Instrument/Restitution Based on Rescission, an Eleventh Cause of Action for Unjust Enrichment, and Twelfth Cause of Action for Alter-Ego;
- Adding a claim for lost profits; and,
- Correcting syntactical and grammatical errors contained in the original complaint.

WHEREAS, Defendants David and Donna McDonald and proposed Defendant NEWN do not oppose the filing of the amended complaint, attached hereto as Exhibit A;

WHEREAS, the parties agree that the proposed First Amended Complaint shall be deemed to be the amended pleading and that it be deemed filed with the Court upon the Court's execution of this Order and shall be served on all Parties within 14 (fourteen) days thereafter.

THEREFORE, IT IS HEREBY STIPULATED AND AGREED that, subject to Court approval, Plaintiff's First Amended Complaint, attached hereto as Exhibit A, shall be deemed to be the amended pleading and that it be deemed filed with the Court upon the Court's execution of this Order and shall be served on all Parties within 14 (fourteen) days thereafter.

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///

STIPULATION AND [PROPOSED] ORDER GRANTING LEAVE FOR PLAINTIFF TO FILE A FIRST AMENDED COMPLAINT

1 Dated: November 30, 2007

COTCHETT, PITRE & McCARTHY

2
3
4 By: Sean E. Ponist
SEAN E. PONIST
Attorneys for Plaintiffs

5
6 Dated: November __, 2007

GREENBERG TRAUIG, LLP

7
8
9 By: Cindy Hamilton
CINDY HAMILTON
Attorneys for Defendants David and Donna
McDonald and NEWN

10
11
12 ORDER

13 IT IS SO ORDERED.

14
15 Dated: _____

16 JUDGE OF THE SUPERIOR COURT

1 Dated: November __, 2007
2
3

COTCHETT, PITRE & McCARTHY

4 By: _____
5

SEANE E. PONIST
Attorneys for Plaintiffs

6 Dated: November 30, 2007
7

GREENBERG TRAURIG, LLP

8 By: Cindy Hamilton
9 CINDY HAMILTON
Attorneys for Defendants David and Donna
McDonald and NEWN
10
11

12 ORDER

13 IT IS SO ORDERED.
14

15 Dated: DEC 04 2007
16

James A. Main
JUDGE OF THE SUPERIOR COURT
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28

EXHIBIT A

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Attorneys for Plaintiff Jennifer Osbelt

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

JENNIFER OSBELT,

Plaintiff,

v.

DAVID D. McDONALD, DONNA K.
 McDONALD, and DOES 1-10, inclusive,

Defendants.

DAVID D. McDONALD; DONNA K.
 McDONALD; NATIONAL EXPERT
 WITNESS NETWORK, a California Limited
 Liability Company; TECHNOLOGY CLE, a
 California Limited Liability Company,

Cross-Complainants,

v.

JENNIFER OSBELT, individually and doing
 business as PALO ALTO TECHNICAL, and
 DOES 1-10, inclusive,

Cross-Defendants.

Case No. CIV463528

FIRST AMENDED COMPLAINT FOR:

- 1) **BREACH OF CONTRACT:
AGREEMENT OF SALE;**
- 2) **BREACH OF CONTRACT:
OPERATING AGREEMENT;**
- 3) **BREACH OF FIDUCIARY DUTY;**
- 4) **ACCOUNTING;**
- 5) **SLANDER PER SE;**
- 6) **VIOLATIONS OF THE
BEVERLY-KILLEA LIMITED
LIABILITY COMPANY ACT
§§ 17058, 17106;**
- 7) **CORPORATE WASTE;**
- 8) **ABUSE OF CONTROL;**
- 9) **CONVERSION;**
- 10) **CANCELLATION OF
INSTRUMENT/RESTITUTION
BASED ON RESCISSION;**
- 11) **UNJUST ENRICHMENT; AND**
- 12) **ALTER-EGO LIABILITY.**

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1 For her Complaint, plaintiff Jennifer Osbelt ("Osbelt") alleges as follows:

2 **I. NATURE OF THE ACTION**

3 1. This action arises out of breach of a written Operating Agreement and Articles of
4 Organization (the "Operating Agreement") dated as of May 13, 2004 among David D.
5 McDonald, his wife Donna K. McDonald (collectively, the "McDonalds") and Osbelt related to
6 National Expert Witness Network, LLC ("NEWN"). Pursuant to the Operating Agreement,
7 Osbelt owns 25% of NEWN while the McDonalds own the remaining 75% in equal shares.

8 2. In the early part of 2007, Osbelt raised with the McDonalds various questions
9 related to a purported loan of \$210,000 by the McDonalds to NEWN, which the McDonalds have
10 refused to satisfactorily answer. In addition, Osbelt learned that the McDonalds had provided
11 false information to NEWN's accountants, causing them to prepare and file false income tax
12 returns on behalf of NEWN and certain tax schedules related to Osbelt.

13 3. In order to ascertain answers to her questions, Osbelt repeatedly requested access
14 to NEWN's books and records. Despite Osbelt's right to such access under the Operating
15 Agreement and under California statute, the McDonalds have refused Osbelt access to NEWN's
16 books and records.

17 4. In addition, the McDonalds have excluded Osbelt from participating in the
18 management of NEWN, and have informed NEWN customers that Osbelt is leaving the expert
19 witness business and NEWN "to get married and have babies."

20 5. On March 26, 2007, David McDonald, on behalf of NEWN, offered to purchase
21 Osbelt's interest in NEWN for more than \$1.8 million, an offer which Osbelt accepted.

22 6. Despite numerous discussions and demands regarding performance, NEWN
23 and/or the McDonalds have failed to perform under the agreement to purchase Osbelt's interest in
24 NEWN and have continued to breach their fiduciary obligations and other obligations under the
25 Operating Agreement and the Beverly-Killea Limited Liability Company Act.

26 7. This lawsuit follows.
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28

II. THE PARTIES

8. Plaintiff Osbelt is an individual residing in Redwood Shores and is a member of National Expert Witness Network, LLC. Osbelt has over 10 years of high tech industry experience, with a focus on cable and wireless networking and security, web development, and client/server technology. She is familiar with the technologies applied to the Internet and Intranet networks, cable and wireless networking and security, LAN/WAN infrastructure, client/server applications, relational database management systems, network performance management, and eBusiness technologies. Osbelt's recent work has been in providing expert witnesses and case management services to the legal profession in areas of high-technology.

9. Defendant National Expert Witness Network, LLC ("NEWN") is a California Limited Liability Company with its principal place of business at One Lagoon Drive, Suite 140 Redwood City, CA 94065. NEWN assists attorneys by providing a network of experts and consultants in high technology disciplines for intellectual property litigation.

10. Defendant David McDonald is an individual residing at 15309 Northlake Road, Magalia, CA 95954. David McDonald is a Member of NEWN.

11. Defendant Donna McDonald, David McDonald's wife, is an individual residing at 15309 Northlake Road, Magalia, CA 95954. Donna McDonald is a Member of NEWN.

12. Osbelt does not know the true names and capacities, whether individual, partnership, corporate, associate, or otherwise, of defendants Does 1 through 10, inclusive, and on that basis designates said defendants herein by such fictitious names. As the true names and capacities of defendants Does 1 through 10, inclusive, or any of them, become known, Osbelt will seek leave to amend this Complaint to state their true names and capacities. Osbelt is informed and believes, and on that basis alleges, that each of the defendants designated herein as Does 1 through 10, inclusive, is in some way liable, responsible or indebted to Osbelt in connection with the events and/or transactions referred to in this Complaint.

13. Osbelt is informed and believes, and on that basis alleges, that except where otherwise explicitly alleged, each of the defendants, including Does 1 through 10, inclusive, is, and at all relevant times herein mentioned was, the agent, partner, joint venturer, employee,

1 and/or conspirator of the remaining defendants, and is, and at all relevant times herein mentioned
2 was, in performing and failing to perform the acts and conduct hereinafter alleged, acting within
3 the course and scope of such agency, partnership, joint venture, employment, and/or conspiracy.
4 Osbelt is further informed and believes, and on that basis alleges, that the acts and conduct of
5 each of the defendants were known to, and authorized and ratified by, the remaining defendants,
6 and that each of the defendants is legally responsible for the conduct and damages herein alleged.

7 **III. JURISDICTION AND VENUE**

8 14. This Court has jurisdiction of this matter pursuant to California Code of Civil
9 Procedure ("CCP") Section 410.10. Each of the defendants reside within the state.

10 15. Venue is proper in this judicial district pursuant to CCP § 395 because the
11 contract at issue was made in, or is to be performed, or the breach has occurred, in this county.
12 The amount in controversy exceeds the jurisdictional minimum amount of this Court.

13 **IV. FACTUAL ALLEGATIONS**

14 16. On or about May 13, 2004, Osbelt and the McDonalds entered into an Operating
15 Agreement and Articles of Organization (the "Operating Agreement"). A copy of the Operating
16 Agreement is attached as Exhibit A. Pursuant to the Operating Agreement, Osbelt is a 25%
17 owner of NEWN, and the McDonalds each own 37.5% of NEWN.

18 17. The authority of members to participate in the management of NEWN is set forth
19 in Section 5 of the Operating Agreement. Pursuant to Section 5 of the Operating Agreement,
20 each of the members "will participate in the management of the Company affairs ... and ... have
21 exclusive authority to manage and conduct all the business of the Company, with all rights,
22 powers and authority that are conferred by law or are necessary, convenient or appropriate for the
23 managing of the Company's business" (Ex. A, § 5.)

24 18. Pursuant to Section 6.5 of the Operating Agreement, NEWN's books and records
25 are to be maintained at its principal place of business and "[a]ll Members ... have the right on
26 reasonable notice to the Company to ... inspect and ... copy the books and records of the
27 Company" (Ex. A, § 6.5.)

1 19. In the event of a so-called "Triggering Event," the "Company and other Members
2 shall have the option to purchase the Membership Interest in the Company of such Member ... at
3 the price and on the terms provided in Section 8.8" of the Operating Agreement. (Ex. A, § 1.38.)

4 20. In late March 2007, Osbelt became aware of a purported loan from the
5 McDonald's to NEWN in an amount of \$210,000 ostensibly made in 2003. To Osbelt's
6 knowledge, the loan had not been reflected in NEWN's books and records at any time prior to
7 2007, and Osbelt requested an explanation from the McDonalds and documentary evidence of
8 the loan. The McDonalds refused to provide a satisfactory response to Osbelt's inquiries.

9 21. On March 26, 2007, David McDonald sent Osbelt an e-mail complaining about
10 Osbelt's inquiries concerning the loan. He also stated that Osbelt's "lack of trust [in the
11 McDonalds] is insulting to us completely unwarranted and frankly unacceptable. I think that it is
12 a good idea for you to move on." McDonald then went on to explain to Osbelt the contractual
13 procedure pursuant to the Operating Agreement for the McDonalds to purchase Osbelt's interest
14 ("The Company must determine that we wish to purchase membership shares; we do."), and the
15 calculation of the purchase price. McDonald calculated the purchase price of Osbelt's interest at
16 NEWN as \$1,886,063.80 and demanded that Osbelt accept or reject the offer that same day. A
17 copy of David McDonald's e-mail dated March 26, 2007 is attached as Exhibit B.

18 22. On March 26, 2007, and as requested by David McDonald, Osbelt responded to
19 McDonalds' and/or NEWN's offer by e-mail stating, in pertinent part: "I will take your deal ...
20 [g]o ahead and draw up the papers." A copy of Osbelt's e-mail dated March 26, 2007 is attached
21 as Exhibit C. On April 3, 2007, Osbelt left to get married and celebrate their union in Hawaii.

22 23. While in Hawaii, Osbelt was contacted by her tax preparer. He advised her that,
23 according to the tax forms provided by NEWN, she owed the IRS an unexpected amount of
24 taxes. Osbelt requested from her tax preparer a copy of the Schedule K-1s, which reflect a
25 member's purported income from a limited liability corporation, submitted by NEWN. Osbelt
26 immediately realized the information on the schedules was false and attributed substantially more
27 of NEWN's annual taxable income to her than was proper under the Operating Agreement.
28 Osbelt's inquiries to the McDonalds concerning the discrepancies were rebuffed.

1 24. On her return from her wedding and celebration in Hawaii on April 17, 2007,
2 Osbelt attempted to contact the McDonalds to discuss the false Schedule K-1s, but they refused to
3 speak with her. On information and belief, the McDonalds also instructed NEWN's accountants
4 not to discuss any of NEWN's financial affairs with Osbelt. Furthermore, Osbelt learned that the
5 McDonalds had hired an individual named Tom Fisher to take over Osbelt's operational duties at
6 NEWN. Finally, on information and belief, the McDonalds began informing NEWN clients that
7 Osbelt has left NEWN and the expert witness business "to get married and have babies."

8 25. On or about April 20, 2007, Osbelt received a letter from US Bank advising her
9 that NEWN was overdue on renewing its line of credit with US Bank, and requesting certain
10 financial information from her to renew the NEWN Member's personal guarantees for the line of
11 credit, despite the fact that the McDonalds and/or NEWN was purchasing Osbelt's interest in
12 NEWN. A copy of US Bank's letter dated April 17, 2007, is attached as Exhibit D. By this time,
13 NEWN's indebtedness to US Bank had grown to over \$260,000.

14 26. Concerned about the extent of NEWN's indebtedness and the McDonalds' refusal
15 to provide details about the loan, Osbelt contacted US Bank and informed it that she would not
16 sign as a guarantor until she had received details about the loan from the McDonalds.

17 27. On April 20, 2007, Osbelt sent David McDonald an e-mail in which she
18 requested, inter alia, to be allowed to inspect and copy the "the past 4 years of books and records
19 of [NEWN]. . . ." A copy of Osbelt's April 20, 2007 e-mail is attached as Exhibit E.

20 28. On May 5, 2007, David McDonald sent Chris Rodi ("Rodi"), Osbelt's husband, an
21 e-mail stating that he had been notified by US Bank that it was calling in the loan. Attached "to
22 the e-mail was a letter from David McDonald to Rodi. That same day, Rodi responded that
23 Osbelt was unwilling to renew her personal guarantee to US Bank on behalf of NEWN and
24 explained her reasoning therefor. He also explained that any purported capital call under the
25 Operating Agreement would be premature and ineffective given the disparities that Osbelt had
26 found in NEWN's financial records, including the false Schedule K-1s. A copy of David
27 McDonald's e-mail dated May 5, 2007, the attached letter, and Rodi's response is attached as
28 Exhibit F.

1 29. On May 8, 2007, David McDonald sent Osbelt an e-mail to which he attached a
2 Notice of Default from US Bank to NEWN dated May 7, 2007. In his letter, McDonald
3 purported to invoke the provisions of Section 3.1 of the Operating Agreement and requested that
4 Osbelt contribute an amount of \$66,104.48 representing 25% of NEWN's indebtedness to US
5 Bank by May 23, 2007. A copy of McDonald's e-mail dated May 8, 2007 and the US Bank
6 notice dated May 7, 2007, are attached as Exhibit G.

7 30. That same day, May 8, 2007, and the next, May 9, 2007, Rodi, on behalf of Osbelt,
8 sent two e-mails to David McDonald assuring McDonald that Osbelt wanted to comply fully
9 with any obligation she had under the Operating Agreement but advising him that she was unable
10 to do so given the discrepancy in NEWN's financial statements and the false Schedule K-1s, and
11 that the purported invocation of Section 3.1 of the Operating Agreement was ineffective. A copy
12 of Rodi's e-mails dated May 8 and 9, 2007 is attached as Exhibit H.

13 31. On May 10, 2007, David McDonald responded by e-mail to Rodi bluntly stating
14 "Jennifer has 13 days left to provide the additional cash" By this time, it was clear that the
15 McDonalds were intent on forcing Osbelt out of NEWN by any means possible. A copy of
16 David McDonald's May 10, 2007 e-mail is attached as Exhibit I.

17 32. On May 17, 2007, Donald Gagliardi of Bergeson, LLP, on behalf of Osbelt, sent a
18 letter to E. Thorn Rumberger ("Rumberger") of Greenberg Traurig, an attorney believed to
19 represent the McDonalds, reiterating Osbelt's request for access to NEWN's books and records;
20 reiterating Osbelt's position that the purported capital call was invalid; and suggesting that the
21 parties work toward a negotiated settlement of the issues between them. A copy of Donald
22 Gagliardi's letter of May 17, 2007 is attached as Exhibit J.

23 33. At Rumberger's request, attorneys for Osbelt attended a meeting at Rumberger's
24 offices on May 18, 2007, to initiate a dialogue between the parties. At that meeting, counsel for
25 Osbelt again reiterated that inspection of NEWN's books and records was a predicate to any
26 resolution of the dispute between the parties. Counsel for the McDonalds undertook to schedule
27 such inspection.

1 34. On May 21, 2007, and not having received a response from counsel for the
2 McDonald's to the May 17 Gagliardi letter or to the requests made at the May 18 meeting,
3 counsel for Osbelt sent another letter to Rumberger. Gagliardi concluded the letter by stating
4 "[p]lease regard this letter as the final request by Osbelt for a full inspection of the complete
5 books and records of NEWN" Gagliardi also provided a date for the inspection, May 24,
6 2007. A copy of Gagliardi's May 21, 2007, letter to Rumberger is attached as Exhibit K.

7 35. On May 22, 2007, Fred Adam ("Adam"), another attorney representing the
8 McDonalds, responded to Gagliardi by e-mail. In his e-mail, Adam stated "the Magalia location
9 [is] not an option [for the inspection] since the office is located in the home of [the McDonalds]."
10 Adam went on to state that the McDonalds required an "express list of what was being
11 requested." A copy of Adam's e-mail to Gagliardi dated May 22, 2007 is attached as Exhibit L.

12 36. Gagliardi responded by letter that same day, May 22, 2007. In his letter,
13 Gagliardi rejected Adam's attempt to limit the inspection to certain specified documents, but
14 provided a non-exclusive list of categories of records that Osbelt wished to inspect and copy.
15 Gagliardi also pointed out that inasmuch as the McDonalds had improperly elected to maintain
16 the books and records of NEWN in their home, it was inappropriate to use that fact as a reason
17 for not allowing Osbelt access to the records. Gagliardi again stated that Osbelt wished to
18 conduct the inspection on May 24, 2007. A copy of Gagliardi's May 22, 2007, letter to Adam is
19 attached as Exhibit M.

20 37. On May 23, 2007, Adam sent an e-mail at 6:39 pm to counsel for Osbelt in which
21 he stated: "[h]ope to get you a response to document request later tonight." A copy of Adam's
22 email to Marc van Niekerk dated May 23, 2007, is attached as Exhibit N.

23 38. Later that evening, Van Niekerk sent Adam an e-mail at 8:06 pm noting that
24 Osbelt had still not received confirmation that she would be allowed access to NEWN's books
25 and records the next day, May 24, 2007, and requesting such confirmation. A copy of Van
26 Niekerk's e-mail to Adam dated May 23, 2007, is attached as Exhibit O.

1 39. A few minutes later, Adam responded to Van Niekerk's e-mail stating "tomorrow
2 won't work due to too short notice for scheduling, but we are trying to schedule for Friday [May
3 25]." A copy of Adam's e-mail to Van Niekerk dated May 23, 2007, is attached as Exhibit P.

4 40. On May 24, 2007, counsel for the McDonalds sent a letter to Gagliardi
5 purportedly responding to Osbelt's requests for access to NEWN's books and records, but
6 advancing numerous spurious arguments why access was not possible. Again, Adam specifically
7 informed counsel that Osbelt would not be allowed to inspect the records where they are
8 maintained. Adam went on to state that "it is our client's sincere belief that the records and other
9 materials provided by our client to date, or already in Ms. Osbelt's possession, comply with your
10 client's document request" A copy of Adam's letter to Gagliardi dated May 24, 2007, is
11 attached as Exhibit Q.

12 41. Counsel for Osbelt responded to Adam by letter dated May 25, 2007, refuting
13 each of Adam's contentions. Counsel for Osbelt reiterated Osbelt's request for access to source
14 documents, as opposed to spreadsheets and tables prepared by the McDonalds. A copy of the
15 letter dated May 25, 2007, from Van Niekerk to Goines is attached as Exhibit R.

16 42. Five days later, on May 30, 2007, Goines responded to Van Niekerk's letter of
17 May 25, 2007. In his letter, Goines made it clear that the McDonalds would not be allowing
18 Osbelt access to the books and records of NEWN or allow Osbelt access to the books and records
19 where they are maintained. A copy of Goines' May 30, 2007, letter to Van Niekerk is attached as
20 Exhibit S.

21 43. After filing this litigation, Osbelt served discovery on the McDonalds on August
22 1, 2007. Osbelt's discovery requests included requests for the production of all books and
23 records, including, but not limited to, source documents. The McDonalds again refused to
24 produce those documents.

25 44. At the recent depositions of the McDonalds held October 17, 2007, and October
26 18, 2007, Osbelt again had requested production of all books and records, including, but not
27 limited to, source documents. Again, the McDonalds failed to produce these documents.

45. At the deposition of David McDonald, it came to light that on or about April of 2007, the McDonalds caused NEWN to enter into "consulting" agreements with themselves. Under these purported agreements, Donna McDonald provides bookkeeping "consulting" services to NEWN and David McDonald provides CEO "consulting" services to NEWN. Previously, Donna and David McDonald had performed these functions as members and managers of NEWN and had received compensation through profits shared by all members and managers. Now, through these self-serving "consulting" agreements, the McDonalds have paid themselves hundreds of thousands of dollars for their services.

46. On or about October 30, 2007, David McDonald, without the input of all members and managers, including Osbelt, or even the opportunity for them to provide input, unilaterally purported to order a capital call. The purported capital call did not comply with the terms and conditions of the Operating Agreement and was done for improper purpose. The McDonalds are using the capital call device in bad faith in order to better their majority position in the company, while diluting Osbelt's position.

47. The McDonalds, collectively majority members and managers of NEWN and TCLE, with a joint 75% interest in the companies, have repeatedly violated their duties and obligations to Osbelt, a minority member and manager of NEWN and TCLE. Further, they have reneged on their offer to purchase Osbelt's interest in NEWN and/or caused NEWN to renege, thereby breaching a legally binding contract.

FIRST CAUSE OF ACTION

(Breach of Contract: Agreement of Sale Against All Defendants)

48. Osbelt incorporates by reference the allegations set forth above as though fully restated herein.

49. On or about March 26, 2007, David McDonald, on behalf of NEWN and/or his own behalf and that of his wife, Donna McDonald, offered to purchase Osbelt's interest in NEWN for a purchase price of \$1,886,063.80. McDonald specified that the offer was to be accepted or rejected that same day.

50. Osbelt accepted McDonald's offer that same day, March 26, 2007, as a consequence whereof a valid and enforceable agreement of sale of Osbelt's share in NEWN to the McDonalds and/or NEWN in exchange for payment by them to Osbelt of \$1,886,063.80 was created.

51. Osbelt is, and at all times, was ready, willing, and able to complete performance under the agreement.

52. Without justification and in breach of its obligations under the agreement, the McDonalds and/or NEWN have failed to make payment to Osbelt of the agreed upon purchase price of \$1,886,063.80 or any part thereof.

53. As a result of the McDonalds' and/or NEWN's breach of the Agreement, Osbelt has been damaged in an amount to be proven at trial, but in no event less than \$1,886,063.80, plus interest and costs of suit.

SECOND CAUSE OF ACTION

(Breach of Contract: Operating Agreement Against Defendants

David McDonald and Donna McDonald)

54. Osbelt incorporates by reference the allegations set forth above as though fully restated herein.

55. On or about May 13, 2004, Osbelt and the McDonalds entered into an Operating Agreement and Articles of Organization (the "Operating Agreement").

56. The authority of Members to participate in the management of NEWN is set forth in Section 5 of the Operating Agreement. Pursuant to Section 5 of the Operating Agreement, each of the Members "will participate in the management of the Company affairs...and... have exclusive authority to manage and conduct all the business of the Company, with all rights, powers and authority that are conferred by law or are necessary, convenient or appropriate for the managing of the Company's business" (Ex. A, § 5.)

57. Pursuant to Section 6.5 of the Operating Agreement, NEWN's books and records are to be maintained at its principal place of business and "[a]ll Members ... have the right on

1 reasonable notice to the Company to ... inspect and ... copy the books and records of the
2 Company" (Ex. A, § 6.5.)

3 58. Osbelt has performed all of her obligations under the Operating Agreement except
4 those obligations which have been waived or excused. Further, Osbelt is, and at all times, was
5 ready, willing, and able to complete performance under the Operating Agreement.

6 59. The McDonalds, without justification, have breached the Operating Agreement
7 by, inter alia:

8 59.1 Wrongfully excluding Osbelt from participating in management of
9 NEWN;

10 59.2 Failing to maintain the books and records at NEWN's principal place of
11 business in Redwood City;

12 59.3 Denying Osbelt access to NEWN's books and records for the purpose of
13 copying them, despite repeated requests therefor;

14 59.4 Causing the books and records of NEWN to reflect false allocation of
15 NEWN's profits to Osbelt;

16 59.5 Causing NEWN's accountants to prepare false financial statements on
17 behalf of NEWN;

18 59.6 Causing NEWN's accountants to prepare and file false income tax returns
19 on behalf of NEWN;

20 59.7 Failing to disclose interested transactions with NEWN;

21 59.8 Self-dealing with NEWN including, but not limited to: consulting
22 agreements, reimbursement of personal expenses and purported loans to
23 NEWN, all to the detriment of NEWN; and

24 59.9 Abusing their power as co-managers of NEWN by freezing out co-
25 manager Osbelt and making a capital call without the consent of all
26 members and co-managers of NEWN.
27
28

60. As a result of the McDonalds' breach of the Operating Agreement, Osbelt has been damaged in an amount to be proven at trial, but in no event less than \$1,886,063.80, plus interest and costs of suit.

THIRD CAUSE OF ACTION

(Breach of Fiduciary Duty Against Defendants David McDonald and Donna McDonald)

61. Osbelt incorporates by reference the allegations set forth above as though fully restated herein.

62. As Osbelt's fellow members in NEWN and as holders of the majority interest in NEWN, the McDonalds owed Osbelt fiduciary duties of loyalty, good faith, candor, and fair dealing.

63. The McDonalds have breached their fiduciary duties to Osbelt by:

- 63.1 Wrongfully excluding Osbelt from participating in management of NEWN;
- 63.2 Failing to maintain the books and records at NEWN's principal place of business in Redwood City;
- 63.3 Denying Osbelt access to NEWN's books and records for the purpose of copying them, despite repeated requests therefor;
- 63.4 Causing the books and records of NEWN to reflect false allocation of NEWN's profits to Osbelt;
- 63.5 Causing NEWN's accountants to prepare false financial statements on behalf of NEWN;
- 63.6 Causing NEWN's accountants to prepare and file false income tax returns on behalf of NEWN;
- 63.7 Failing to disclose interested transactions with NEWN;
- 63.8 Self-dealing with NEWN including, but not limited to: consulting agreements, reimbursement of personal expenses and purported loans to NEWN, all to the detriment of NEWN; and

63.9 Abusing their power as co-managers of NEWN by freezing out co-manager Osbelt and making a capital call without the consent of all members and co-managers of NEWN.

64. As a result of the McDonalds' breach of their fiduciary duties to Osbelt, Osbelt has been damaged in an amount to be proven at trial.

FOURTH CAUSE OF ACTION

(Accounting Against Defendants David McDonald and Donna McDonald)

65. Osbelt incorporates by reference the allegations set forth above as though fully restated herein.

66. As Osbelt's fellow members in NEWN and as holders of the majority interest in NEWN, the McDonalds owed Osbelt fiduciary duties of loyalty, good faith, candor and fair dealing.

67. The McDonald's have controlled the maintenance of NEWN's financial books and records and have excluded Osbelt from access thereto.

68. Osbelt wishes to assign her membership interest in NEWN to the McDonalds against payment by the McDonalds pursuant to the formula set forth in the Operating Agreement.

69. The payment due from the McDonalds is unknown and cannot be ascertained without an accounting of the receipts and disbursements of all NEWN transactions.

70. The McDonalds have failed and refused, and continue to fail and refuse, to render such an accounting.

71. The foregoing actions entitle Osbelt to an accounting against the McDonalds to determine the purchase price of Osbelt's interest in NEWN.

FIFTH CAUSE OF ACTION

(Slander Per Se Against Defendants David McDonald and Donna McDonald)

72. Osbelt incorporates by reference the allegations set forth above as though fully restated herein.

73. On information and belief, the McDonalds have been informing NEWN clients that Osbelt has left NEWN and the expert witness business "to get married and have babies."

74. This statement by the McDonalds is false and known by the McDonalds to be false and was uttered with malice.

75. This statement by the McDonalds is injurious to Osbelt's professional and/or business reputation.

76. The foregoing entitles Osbelt to compensatory and punitive damages for which the McDonalds are liable, according to proof.

SIXTH CAUSE OF ACTION

(Violations of Beverly-Killea Limited Liability Company Act §§ 17058, 17106 Against Defendants David McDonald and Donna McDonald)

77. Osbelt incorporates by reference the allegations set forth above as though fully restated herein.

78. The McDonalds have violated Sections 17058, 17106 of the Beverly-Killea Limited Liability Company Act by:

78.1 Failing to maintain the books and records of NEWN as they relate to the internal affairs of NEWN for the current and past four fiscal years; and

78.2 Refusing to allow Osbelt to inspect and copy NEWN's books and records despite repeated, reasonable and appropriate requests.

79. The foregoing entitles Osbelt to an order pursuant to Section 17106(f) that the McDonalds provide Osbelt with the information and financial statements of NEWN and reasonable expenses, including attorneys fees, pursuant to Section 17106(g).

SEVENTH CAUSE OF ACTION

(Corporate Waste Against Defendants David McDonald and Donna McDonald)

80. Osbelt incorporates by reference the allegations set forth above as though fully restated herein.

81. David and Donna McDonald, and each of them, wrongfully and intentionally diverted NEWN's and TCLE's company assets for improper and unnecessary purposes, which

1 acts constitute corporate waste and gift. The McDonalds, joint majority members and managers
2 of NEWN and TCLE, had a duty not to permit corporate waste or to commit corporate waste
3 themselves.

4 82. The McDonalds have wrongfully and intentionally diverted NEWN's and TCLE's
5 company assets for their own, personal use. Diversion of company assets includes, but is not
6 limited to, improperly using company assets to pay personal litigation expenses, improperly
7 paying themselves improper and excessive "consulting" fees, and improperly using company
8 assets for personal expenses.

9 83. Most recently, the McDonalds have excluded Osbelt from management of the
10 companies and then proceeded to drain the company assets for their personal benefit.
11 Immediately after excluding Osbelt from management, The McDonalds caused NEWN to enter
12 into "consulting" agreements with themselves. Under the so-called "consulting" agreements,
13 Donna McDonald provides bookkeeping "consulting" services to NEWN and David McDonald
14 provides CEO "consulting" services to NEWN. Previously, the McDonalds did this same work
15 and received compensation through profits shared by the members. But, with Osbelt removed
16 from management, they now perform the same tasks as before, but receive hundreds of thousands
17 of dollars for their "consulting" services.

18 84. The conduct of Defendants David and Donna McDonald, and each of them, was
19 not in good faith, nor did the McDonalds make any judgment, in the exercise of good faith, that
20 based on the circumstances of the transactions and self-dealing, of which they were fully aware,
21 that their actions and omissions were worthwhile to NEWN and TCLE and in those companies
22 bests interests. Rather, their actions directly interfered with the business of NEWN and TCLE by
23 diverting corporate assets out of the companies.

24 85. The McDonalds, and each of them, aided and abetted, encouraged and rendered
25 substantial assistance to each other in accomplishing the wrongful conduct, acts and omissions
26 and wrongful goals complained of herein. In abiding and abetting and substantially assisting the
27 commission of these wrongful acts, each of the McDonalds realized that his or her conduct
28

1 would substantially assist the accomplishments of the wrongful conduct, wrongful goals, and
2 wrongdoing.

3 86. As a result of the McDonalds' wrongful conduct, and the wrongful conduct of
4 each of them, NEWN, TCLE and Osbelt have suffered and continue to suffer economic and non-
5 economic damages. NEWN, TCLE and Osbelt has also suffered other general and specific
6 damages, including, but not limited to, lost profits, unwarranted financial losses and expenses
7 and alleged dilution of interest in the companies. Osbelt is entitled to disgorgement of corporate
8 waste attributed to the McDonalds' wrongful actions and self-dealing and any compensation
9 wrongfully obtained by them thereby from expense payments, consulting fees, alleged dilution of
10 interest any other compensation that would not have been paid but for their wrongful conduct.

11 EIGHT CAUSE OF ACTION

12 (Abuse of Control Against Defendants David McDonald and Donna McDonald)

13 87. Osbelt incorporates by reference the allegations set forth above as though fully
14 restated herein.

15 88. The McDonalds dominated and controlled the business affairs of NEWN and
16 TCLE through their majority stock ownership, member and management positions, financial
17 dealings and otherwise. The McDonalds abused their control of these companies by acting
18 contrary to the companies' best interest and instead acting to further their own private financial
19 and personal interests.

20 89. The McDonalds, and each of them, knew or should have known that their acts and
21 omissions constituted a breach of duty and an abuse of control. Each Defendant further gave
22 substantial assistance to the other Defendant and in doing so aided and abetted the violations by
23 the other Defendant. Without such assistance and encouragement of one Defendant to another,
24 the wrongful acts could not have occurred.

25 90. In violation of their contractual and statutory duties, the McDonalds abused their
26 positions of control by entering into self-interested transactions without the approval or even the
27 consultation of any of NEWN's and TCLE's disinterested members or managers. These
28 transactions included, but were not limited to, causing NEWN and TCLE to pay the McDonalds

1 personal and home expenses, causing NEWN to become indebted to the McDonalds, causing
 2 NEWN to require unwarranted and improper capital calls, and causing TCLE to abandon patent
 3 claims against its interests.

4 91. As a result of the McDonalds' wrongful conduct, and the wrongful conduct of
 5 each of them, NEWN, TCLE and Osbelt have suffered and continue to suffer economic and non-
 6 economic damages. NEWN, TCLE and Osbelt have also suffered other general and specific
 7 damages, including, but not limited to, lost profits, unwarranted financial losses and expenses
 8 and alleged dilution of interest in the companies. Osbelt is entitled to disgorgement of corporate
 9 waste attributed to the McDonalds' wrongful actions and self-dealing and any compensation
 10 wrongfully obtained by the McDonalds thereby from expense payments, consulting fees, alleged
 11 dilution of interest and any other compensation that would not have been paid but for their
 12 wrongful conduct.

13 NINTH CAUSE OF ACTION

14 (Conversion Against Defendants David McDonald and Donna McDonald)

15 92. Osbelt incorporates by reference the allegations set forth above as though fully
 16 restated herein.

17 93. During all relevant times while Osbelt was a member of NEWN and TCLE, she
 18 was and still is entitled to a share of the profits of these companies.

19 94. Contrary to their contractual and statutory duties, the McDonalds wrongfully
 20 misappropriated and converted the assets of NEWN, TCLE and Osbelt for themselves. This
 21 conversion includes, but is not limited to, converting Osbelt's interest in NEWN into their own
 22 through unwarranted and improper capital calls, converting NEWN's and Osbelt's assets and
 23 profits into their own through excessive and improper "consulting" fees payable to themselves,
 24 converting NEWN's and Osbelt's assets into their own through false and improper debt
 25 obligations payable to themselves, converting NEWN, TCLE and Osbelt's assets into their own
 26 through wrongful and improper payment to themselves.

27 95. Osbelt has demanded the immediate return of these assets, but the McDonalds
 28 have failed and refused, and continue to fail and refuse, to return the assets to NEWN, TCLE and

1 Osbelt. A copy of Osbelt's written demand is attached to the First Amended Complaint as
2 Exhibit T.

3 96. The McDonalds' conversion of these assets was with malice, oppression, and a
4 willful and conscious disregard for the rights of Osbelt. The McDonalds misappropriated and
5 converted company assets and funds for their personal use without any approval or consultation
6 of Osbelt or any other disinterested member or manager of the companies. They acted with
7 reckless indifference and willful and conscious disregard of any person who had an interest in the
8 converted property and, particularly, the rights of Osbelt.

9 97. Further, after knowledge and notice of Osbelt's interest in the converted assets
10 was given to the McDonalds, they failed and refused, and continue to fail and refuse, to return the
11 assets. By reason of these acts, Osbelt has been oppressed and seeks punitive and exemplary
12 damages.

13 98. In addition to exemplary and punitive damages, NEWN, TCLE and Osbelt have
14 additionally suffered and continue to suffer economic and non-economic damages. NEWN,
15 TCLE and Osbelt have also suffered other general and specific damages, including, but not
16 limited to, lost profits, unwarranted financial losses and expenses and alleged dilution of interest
17 in the companies. Osbelt is entitled to disgorgement of corporate waste attributed to the
18 McDonalds' wrongful actions and self-dealing and any compensation wrongfully obtained from
19 the McDonalds thereby from expense payments, consulting fees, alleged dilution of interest and
20 any other compensation that would not have been paid but for their wrongful conduct.

21 **TENTH CAUSE OF ACTION**

22 **(Cancellation of Instrument/Restitution Based on Rescission Against Defendants David 23 McDonald and Donna McDonald)**

24 99. Osbelt incorporates by reference the allegations set forth above as though fully
25 restated herein.

26 100. The McDonalds, as members and managers of NEWN and TCLE, caused NEWN
27 and TCLE to enter into transactions with the McDonalds. The McDonalds had a financial
28 interest in these transactions which conflicted with the best interests of NEWN, TCLE and,

1 minority member and manager, Osbelt. The McDonalds purportedly made loans to NEWN,
2 causing NEWN to be indebted to the McDonalds for hundreds of thousands of dollars. The
3 McDonalds also caused NEWN to enter into "consulting" agreements with themselves which
4 purport to require NEWN to pay the McDonalds hundreds of thousands of dollars. The
5 McDonalds further caused NEWN to make improper capital calls which have purported to dilute
6 Osbelt's interest in NEWN while increasing their own interest.

7 101. Despite their conflict of interest, the McDonalds failed to have a disinterested
8 member or manager review and/or approve these transactions and agreements and, in fact, none
9 of these agreements and transactions were approved by Osbelt or any other disinterested member
10 or manager of NEWN. Further, the McDonalds never allowed Osbelt or any other disinterested
11 member or manager of NEWN even an opportunity to vote on, approve, object or otherwise
12 provide input as to these agreements and transactions or otherwise provide input or object. In
13 fact, the McDonalds never even disclosed these agreements and transactions to Osbelt until well
14 after they were completed or not at all.

15 102. Osbelt hereby intends service of copies of the summons and this First Amended
16 Complaint as notice of rescission of the contracts and transactions.

17 103. The McDonalds, as majority members and managers, entered into these self-
18 serving contracts and transactions for the sole benefit of themselves and at the detriment of
19 NEWN, TCLE and Osbelt. These transactions are sham: the McDonalds entered into these
20 transactions and/or caused NEWN and TCLE to enter into the transactions to injure and defraud
21 Osbelt and the companies.

22 104. In addition to exemplary and punitive damages, NEWN, TCLE and Osbelt have
23 additionally suffered and continue to suffer economic and non-economic damages. NEWN,
24 TCLE and Osbelt have also suffered other general and specific damages, including, but not
25 limited to, lost profits, unwarranted financial losses and expenses, and alleged dilution of interest
26 in the companies. Osbelt is entitled to disgorgement of corporate waste attributed to the
27 McDonalds' wrongful actions and self-dealing and any compensation wrongfully obtained by the
28

1 McDonalds thereby from expense payments, consulting fees, alleged dilution of interest, and any
2 other compensation that would not have been paid but for their wrongful conduct.

3 **ELEVENTH CAUSE OF ACTION**

4 **(Unjust Enrichment Against Defendants David McDonald and Donna McDonald)**

5 105. Osbelt incorporates by reference the allegations set forth above as though fully
6 restated herein.

7 106. By their wrongful acts and omissions, the McDonalds, and each of them, have
8 been unjustly enriched at the expense of and detriment to NEWN, TCLE and Osbelt who were
9 meanwhile unjustly deprived.

10 107. Osbelt, on behalf of NEWN, TCLE and herself, seeks restitution from The
11 McDonalds, and each of them, and seeks an order of this Court disgorging all improper profits,
12 fees, payments, benefits and other compensations obtained by the McDonalds from their
13 wrongful conduct and breaches of fiduciary duties.

14 **TWELFTH CAUSE OF ACTION**

15 **(Alter Ego Liability Against Defendants David McDonald and Donna McDonald)**

16 108. Osbelt incorporates by reference the allegations set forth above as though fully
17 restated herein.

18 109. There exists, and at all times herein mentioned there existed, a unity of interest
19 and ownership between the McDonalds and NEWN, such that any individuality and separateness
20 between the McDonalds and NEWN ceased, and these limited liability companies are the alter
21 ego of the McDonalds in that they wholly disregarded any of the obligations imposed upon them
22 by the operating agreement and California Corporations law. The McDonalds dominated and
23 controlled the business of NEWN, despite the rights of other Osbelt and other members of the
24 company.

25 110. Adherence to the fiction of the separate existence of NEWN, as an entity distinct
26 from the McDonalds, would permit an abuse of the limited liability company privilege and would
27 sanction fraud or otherwise promote injustice as the McDonalds have run NEWN in bad faith
28 with utter disregard to the Operating Agreement and the rights of Osbelt and the other members.

1 The McDonalds used the limited liability companies for their personal benefit and not for
2 company business, and, in doing so, acted to the detriment of NEWN and the other members.

3 111. To the extent that the trier of fact finds that NEWN, not the McDonalds, breached
4 the agreement to purchase Osbelt's interest in NEWN as alleged in Osbelt's First Cause of
5 Action, the McDonalds should be jointly and severally liable as alter-ego Defendants.

6 **PRAYER**

7 WHEREFORE, Osbelt prays for judgment jointly and severally against the McDonalds to
8 the First Cause of Action and against the McDonalds as to the remaining causes of action as
9 follows:

- 10 a. For damages according to proof at trial, but in no event less than
11 \$1,886,063.80;
12 b. For an accounting;
13 c. For an order pursuant to Section 17106(f) of the Beverly-Killea Limited
14 Liability Company Act;
15 d. For punitive damages as determined by a jury;
16 e. For past and future profits;
17 f. For pre-judgment interest at the legal rate;
18 g. For costs of suit, including attorneys' fees;
19 h. For such other and further relief as this Court deems just and proper.

20
21 Dated: November 30, 2007

COTCHETT, PITRE & McCARTHY

22
23 By: 

SEAN E. PONIST

Attorneys for Plaintiff Jennifer Osbelt

JURY DEMAND

Plaintiff demands trial by jury on all issues so triable.

DATED: November 30, 2007

COTCHETT, PITRE & McCARTHY

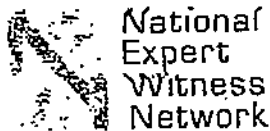
By



SEAN E. PONIST

Attorneys for Plaintiff Jennifer Osbelt

EXHIBIT A



National Expert Witness Network, LLC
OPERATING AGREEMENT &
ARTICLES OF ORGANIZATION

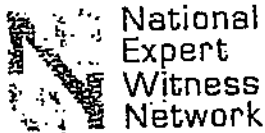
THIS OPERATING AGREEMENT is entered into as of May 13, 2004 by: David D. McDonald, Donna K. McDonald & Jennifer Osbelt (referred to individually as a Member and collectively as the Members). The Members desire to form a limited liability company ("Company") under the Beverly-Killea Limited Liability Company Act.

The Members enter into this Agreement to form and provide for the governance of the Company and the conduct of its business, and to specify their relative rights and obligations. The Members have formed a limited liability company under the Beverly-Killea Limited Liability Company Act. The Articles of Organization of the Company filed with the California Secretary of State August 7, 2002 are hereby adopted and approved by the Members.

NOW THEREFORE, the Members agree as follows:

ARTICLE I: DEFINITIONS

- 1 The following terms used in this Operating Agreement shall (unless otherwise expressly provided herein or unless the context otherwise requires) have the following respective meanings
 - 1.1 "AGREEMENT" shall refer to this Operating Agreement
 - 1.2 "Articles of Organization" is defined in Corporations Code section 17001(b) as applied to this Company.
 - 1.3 "Act" means the Beverly-Killea Limited Liability Company Act (California Corporations Code §§17000-17655), including amendments from time to time.
 - 1.4 "Assignee" means a person who has acquired a Member's Economic Interest in the Company, by way of a Transfer in accordance with the terms of this Agreement, but who has not become a Member.
 - 1.5 "Available Cash" means all net revenues from the Company's operations, including net proceeds from all sales, refinancing, and other dispositions of Company property that the Manager, in the Manager's sole discretion, deems in excess of the amount reasonably necessary for the operating requirements of the Company, including debt reduction and Reserves.
 - 1.6 "Book Depreciation" means, with respect to any item of Company property for a given fiscal year, a percentage of depreciation or other cost recovery deduction allowable for federal income tax purposes for such item during that fiscal year equal to the result (expressed as a percentage) obtained by dividing (1) the Fair Market Value of that item at the beginning of the fiscal year (or the acquisition date during the fiscal year), by (2) the federal adjusted tax basis of the item at the beginning of the fiscal year (or the acquisition date during the fiscal year). If the adjusted tax basis of an item is zero, the Manager may determine Book Depreciation, provided that he does so in a reasonable and consistent manner.
 - 1.7 "Capital Contribution" means, with respect to any Member, the amount of the money and the Fair Market Value of any property (other than money) contributed to the Company (net of liabilities secured by such contributed property that the Company is considered to



National Expert Witness Network, LLC OPERATING AGREEMENT & ARTICLES OF ORGANIZATION

- assume or take "subject to" under IRC section 752) in consideration of a Percentage Interest held by such Member. A Capital Contribution shall not be deemed a loan.
- 1.8 "Capital Event" means a sale or disposition of any of the Company's capital assets, the receipt of insurance and other proceeds derived from the involuntary conversion of Company property, the receipt of proceeds from a refinancing of Company property, or a similar event with respect to Company property or assets.
- 1.9 "Capital Profits and Losses" and "Taxable Capital Profits and Losses" mean the Company's Profits or Losses or Taxable Profits or Losses attributable to sales, condemnations, transfers or other dispositions of Company capital assets or interests therein, and insurance proceeds received with respect to Company capital assets.
- 1.10 "Code" or "IRC" means the Internal Revenue Code of 1986, as amended, and any successor provision.
- 1.11 "Company" means the company named in Article II of this Agreement.
- 1.12 "Confidential Information" is defined in Article X, Section 10.2.
- 1.13 "Corporations Code" ("Corp C") means the California Corporations Code.
- 1.14 "Fair Market Value" is defined as one times (1x) the gross income received by the Company during the twelve (12) month period preceding receipt of written notification by the Company of the Member's death, bankruptcy, incompetence or insanity or at any time if no written notice is given to the Company.
- 1.15 "Gross Income" is defined as the difference between sales (customer payments) and sub-contractor fees paid (consultant payments). For Example:

Total Sales:	\$1,000,000.00
Sub-Contractor Fees:	\$ (750,000.00)
Operating Expenses	\$ 250,000.00
Gross Profit	\$ 100,000.00
Taxes	\$ (40,000.00)
Net Profit	\$ 60,000.00

- 1.16 "Losses" means the Company's annual losses, including capital losses, as determined in accordance with generally accepted accounting principles on the cash accounting basis.
- 1.17 "Majority" refers to the vote of Members who own more than fifty percent (50%) of the total interests owned by all Members in that class.
- 1.18 "Members" shall refer to the Parties and reference to a "Member" shall be to any one of the Parties.
- 1.19 "Member Units" or "Units" shall refer to the Units issued to the Members and represent the contributions of capital to the Company entitling the holder to an interest in the Net Profits, Net Losses and distributions of the Company.
- 1.20 "Membership Interest" means a Member's rights in the Company, collectively, including the Member's Economic Interest, any right to Vote or participate in management, and any right to information that concerns the business and affairs of the Company.



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- 1.21 "Notice" means a written notice required or permitted under this Agreement. A notice shall be deemed given or sent when deposited, as certified mail or for overnight delivery, postage and fees prepaid, in the United States mails; when delivered to Federal Express, United Parcel Service, DHL WorldWide Express, or Airborne Express, for overnight delivery, charges prepaid or charged to the sender's account; when personally delivered to the recipient; when transmitted by electronic means, and such transmission is electronically confirmed as having been successfully transmitted; or when delivered to the home or office of a recipient in the care of a person whom the sender has reason to believe will promptly communicate the notice to the recipient.
- 1.22 "Partnership" shall refer to the Partnerships created under this Agreement.
- 1.23 "Percent of the Members" means the specified total of Percentage Interests of all the Members.
- 1.24 "Percentage Interest" means a fraction, expressed as a percentage, the numerator of which is the total of a Member's Capital Account and the denominator of which is the total of all Capital Accounts of all Members.
- 1.25 "Person" means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability Company, or other entity, whether domestic or foreign.
- 1.26 "Profits" means the Company's annual profits, including capital gains, and the term
- 1.27 "Property" shall refer in part to the real property described in Schedule "B", if any, and interests therein owned by the Company.
- 1.28 "Pro-rata share" shall mean a Member's pro-rata share determined by dividing the total number of units held by a Member by the total number of outstanding units.
- 1.29 "Proxy" has the meaning set forth in the first paragraph of Corp C §17001(ai). A Proxy may not be transmitted orally.
- 1.30 "Regulations" ("Reg") means the income tax regulations promulgated by the United States Department of the Treasury and published in the Federal Register for the purpose of interpreting and applying the provisions of the Code, as such Regulations may be amended from time to time, including corresponding provisions of applicable successor regulations.
- 1.31 "Reserves" means the aggregate of reserve accounts that the Manager, in the Manager's sole discretion, deems reasonably necessary to meet accrued or contingent liabilities of the Company, reasonably anticipated operating expenses, and working capital requirements.
- 1.32 "Successor in Interest" means an Assignee, a successor of a Person by merger or otherwise by operation of law, or a transferee of all or substantially all of the business or assets of a Person.
- 1.33 "Substituted Member" is the assignee of a Member who is admitted to the Company in the place and stead of his assignor.
- 1.34 "Tax Item" means each item of income, gain, loss, deduction, or credit of the Company.
- 1.35 "Taxable Profits" means the Company's annual profits, including capital gains/
- 1.36 "Taxable Losses" means the Company's annual losses including capital losses, as determined in the Company's information tax return as from time to time amended, prepared by the Company's accountants or tax attorney for federal income tax purposes, and determined on the cash basis. The terms "Operating Profits" or "Operating Losses" mean the Company's annual Profits or Losses from the ongoing business operations of the



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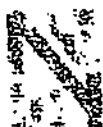
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Company's, and excluding Profits or Losses attributable to sales, condemnations, transfers or other dispositions of Company's property or interests therein, and insurance proceeds received with respect to Company's property, all as determined in accordance with generally accepted accounting principles on the cash basis. The term "Taxable Operating Profits" or "Taxable Operating Losses" mean the Company's Taxable Profits or Taxable Losses from ongoing business operations of the Company's, and excluding taxable Profits or Losses attributable to sales, condemnations, transfers or other dispositions of Company's capital assets or interest therein, and insurance proceeds received with respect to Company's property except that Taxable Operating Profits include income from a sale or exchange of a capital asset which is taxed at ordinary income rates because of the recapture of depreciation, and including the recapture of investment tax credits because of any early disposition of a capital asset.

- 1.37 "Transfer" means, with respect to a Membership Interest or any element of a Membership Interest, any sale, assignment, gift, Involuntary Transfer, Encumbrance, or other disposition of such a Membership Interest or any element of such Membership Interest, directly or indirectly, other than an Encumbrance that is expressly permitted under this Agreement.
- 1.38 "Triggering Event" is defined in On the happening of any of the following events (Triggering Events) with respect to a Member, the Company and the other Members shall have the option to purchase the Membership Interest in the Company of such Member (Selling Member) at the price and on the terms provided in Section 8.8 of this Agreement:
- 1.38.1 The death, incapacity, bankruptcy, or withdrawal of a Member, or the winding up and dissolution of a corporate Member, or merger or other corporate reorganization of a corporate Member as a result of which the corporate Member does not survive as an entity.
- 1.38.2 The failure of a Member to make the Member's Capital Contribution under the provisions of Article III of this Agreement.
- 1.38.3 The occurrence of any other event that is, or that would cause, a Transfer in contravention of this Agreement.
- 1.38.4 "Vote" means a written consent or approval, a ballot cast at a meeting, or a voice vote.
- 1.39 "Voting Interest" means, with respect to a Member, the right to Vote or participate in management and any right to information concerning the business and affairs of the Company provided under the Act, except as limited by the provisions of this Agreement. A Member's Voting Interest shall be directly proportional to that Member's Percentage Interest.

ARTICLE II: ARTICLES OF ORGANIZATION

- 2 The name of the Company shall be National Expert Witness Network, LLC
- 2.1 The Articles of Organization were filed with the California Secretary of State on August 7, 2002, File Number 200222110003. A copy of the Articles of Organization as filed is attached to this Agreement as Exhibit A.



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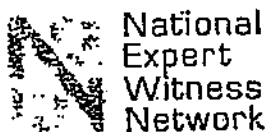
- 2.1 The principal executive office of the Company shall be 15309 Northlake Road, Magalia, CA 95954-9052, or such other place or places as may be determined by the Manager from time to time.
- 2.2 The initial agent for service of process on the Company shall be David D. McDonald, whose address is 15309 Northlake Road, Magalia, CA 95954-9052. The Managers may from time to time change the Company's agent for service of process.
- 2.3 The Company will be formed for the purposes of engaging in the business of providing Expert Witness referral services to the legal profession
- 2.4 The Members intend the Company to be a limited liability company under the Act. Neither the Manager nor any Member shall take any action inconsistent with the express intent of the parties to this Agreement.
- 2.5 The term of existence of the Company shall commence on the effective date of filing of Articles of Organization with the California Secretary of State, and shall continue until terminated by the provisions of this Agreement or as provided by law
- 2.6 The names and addresses of the Initial Members are as set forth in Exhibit B.
- 2.7 The names and business addresses of the Managers are as follows:

<u>Name</u>	<u>Address</u>
David D. McDonald	15309 Northlake Road, Magalia, CA 95954-9052
Dorina K. McDonald	15309 Northlake Road, Magalia, CA 95954-9052
Jennifer Osbelt	650 Oak Grove Avenue, Suite 1, Menlo Park CA 94025

- 2.8 The Members shall be the Managers of the Company.

ARTICLE III: CAPITAL CONTRIBUTIONS & ADMISSION OF NEW MEMBERS

- 3 Capital Contributions. The Members will complete Schedule "A", setting forth the amount of capital contribution to the Company credited to each Member, the percentage of Company ownership or number of Company Units issued therefore, and the amounts of additional capital contributions to be made by the dates set forth on Schedule "A". Member obligations to make additional capital contributions will be evidenced by promissory notes.
- 3.1 Need for Additional Capital Contributions. If at any time the Members determine that the cash available to the Company is, in the Members' reasonable judgment, inadequate to meet the then existing and projected needs of the Company, the Members may request the Members to provide the required additional cash of his pro-rate share of the Company Units. The Members will advise the Company in writing of the cash contribution to be made and the purpose for which the proceeds will be used. The price and terms may be more or less favorable than those on which the initial Units were offered. Within fifteen (15) days after the mailing of this notice by the Members, each Member may elect in writing to provide all, any part of, or none of his pro-rata share of the additional cash. If any Member does not elect to contribute his pro-rata share of the additional cash, the pro-rated share of that Member's Units will be available for purchase, on a pro-rata basis, by the other Members who do contributed the required additional cash. If all the additional cash is not provided by the Members, the Members may offer and sell the unsold



National Expert Witness Network, LLC OPERATING AGREEMENT & ARTICLES OF ORGANIZATION

additional units to other persons on the same terms and conditions as were available to the Members or on such other terms and conditions as the Members may decide, which terms may be more or less favorable than the offer to the Members.

- 3.1.1 All sales of additional units under this section are subject to compliance with applicable federal and provincial securities laws. If, acting upon advice of counsel to the Company, the Members determine in their reasonable judgment that to qualify the sale of these units it would be necessary or appropriate to allow only some of the Members and/or only certain other persons who are not Members to participate in the offering, the Members may determine in their sole discretion, those who will be offered the opportunity to participate.
- 1.40 Capital Accounts. An individual capital account will be maintained for each Member. The capital account of each Member will consist of his original cash or cash equivalent contribution of capital, increased by (i) his additional capital contributions; and (ii) his share of Company Profits, and decreased by (iii) distributions to the Member, whether in cash or in kind, and (iv) his share of Company Losses.

ARTICLE IV: ALLOCATIONS AND DISTRIBUTIONS

- 4 Operating Profits. Operating profits, operating losses, taxable operating profits and taxable operating losses and credits shall be allocated to the Members separately pursuant to the appropriate provisions governing general partnerships found in California Corporations Code Section 16100 et seq. (<http://www.ss.ca.gov/business/gp/gp.htm>)
- 4.1 Capital Profits. Capital Profits, Capital losses, Taxable Capital Profits and Taxable Capital Losses will be allocated to the Members up to the amounts of available cash distributed to them in excess of cumulative net operating profits allocated to them from the inception of the Company, then to Members, if any, with negative capital accounts up to the amount of their negative capital account balances and thereafter to the Members pro-rata in accordance with their ownership of Company units. For the purposes of this section, cash distribution before of the year following the transaction giving rise to the capital profits or losses or taxable capital profits or losses will be deemed to have been distributed during the preceding fiscal year.
- 4.2 Periodic Computation. Profits and losses and taxable profits and taxable losses shall be computed periodically, but no less than quarterly. A proportional adjustment of profits and losses shall be made between a Member and a Member's assignee as of the date that the Members' assignee becomes a substituted Member. All other allocations of profits and available cash which are allocated to the Members will be allocated among them in proportion to the number of units held by each Member.
- 4.3 Available Cash. Available cash will be distributed each year, except as follows:
 - 4.3.1 Available cash in amounts in excess of cumulative net operating profits allocated to the Members from the inception of the Company will be distributed to the Members until the Members have received distributions of available cash in excess of these operating profits equal to the amount of their initial capital contributions.
 - 4.3.2 Available cash will then be distributed to the Members in proportion to the number of units held by each Member.



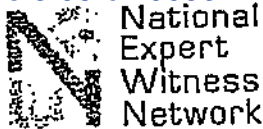
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- 4.3.3 Upon liquidation of the Company, available cash will be distributed to the Members as provided above, except that after making the distributions under (a) and (b) above, and taking into account cash contributions, if any, to be made by the Members on liquidation in accordance with ARTICLE IX: DISSOLUTION AND LIQUIDATION, available cash will be distributed to the Members in amounts equal to each Member's respective capital account balance.
- 4.4 Reimbursement of Member expenses. Members shall be reimbursed for any and all reasonable expenditures that they incur and pay on behalf of the Company.
- 1.41 Company Loans. If the Members deem it to be in the Company interest, the Company may borrow from a Member or Members. Interest will be payable on the loans at an annual rate agreed by the Members and allowable by law.

ARTICLE V: MANAGEMENT

- 5 Powers of Members. Except as otherwise expressly stated herein the Members will participate in the management of the Company affairs. All decisions of the Company will be made by the Members and the Members will have exclusive authority to manage and conduct all the business of the Company, with all rights, powers and authority that are conferred by law or are necessary, convenient or appropriate for the managing of the Company's business subject only to those exceptions expressly set forth in this AGREEMENT. The Members agree that all Company decisions shall be made in accordance with ARTICLE XI: MISCELLANEOUS PROVISIONS of this Agreement and that the following powers or actions shall require approval under the said Section:
- 5.1.1 to borrow funds from any source for Company purposes, and as security therefore, to mortgage or pledge the property or any other assets of the Company, whether real or personal; to repay in whole or in part, refinance, recast, increase, modify or extend any mortgage or mortgages or other encumbrances on the property or any other assets of the Company, and in connection therewith, to execute for and on behalf of the Company any extension, renewals, or modifications of such mortgages or other encumbrances, new mortgages or other encumbrances in lieu of existing mortgages or other encumbrances, and to execute notes, bonds and other evidences of indebtedness;
- 5.1.2. to act for the Company in all transactions concerning the Company real or personal property or business affairs, including the execution of all contracts, leases, deeds, options, loan obligations, deeds of trust and notes;
- 5.1.3 to amend this Agreement and the Certificate of Company. Any mortgagee, grantee, creditor or any person dealing with the Company shall be required to investigate the authority of the Members and to secure the approval or confirmation by all Members of any act of the Members in connection with the conduct of the Company business. The signature of all of the Members will be necessary to convey any interest in Company real property and the Members will prepare and record a Statement of Company to this.
- 5.2 The Members will be liable to the Company in connection with the management of the Company's affairs for acts or omissions which constitute gross negligence or willful misconduct, including any willful breach of this AGREEMENT.

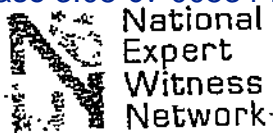


National Expert Witness Network, LLC
 OPERATING AGREEMENT &
 ARTICLES OF ORGANIZATION

- 5.3 Competition. The Members will devote as much of their time and attention to the Company as they each deem necessary or advisable to meet the purpose of the Company and they may, during the continuance of this AGREEMENT, engage in any activity for their own profit and advantage without the consent of the Members. The Members have other business interests and may engage in any other businesses, trades, professions or employment whatsoever, including the acquisition, ownership, management and disposition of the following:
- 5.3.1 Their own accounts or in Company with or as employees, officers, directors or stockholders of any other entity, to the extent which such interests or activities do not compete with the business of the Company, and the Members will not have to account to or otherwise make available to the Company or the Members any other non-competitive business or investment profits or opportunities that might be available to the Members. Situations may arise where the Members or any of them owe conflicting duties to this Company and to other persons or entities. The Members will resolve these conflicts in good faith and will be liable to the Company only for acts or omissions which constitute gross negligence or willful misconduct.
- 5.4 Compensation of the Members. The Members are to receive no compensation by way of salary from the Company. The Company, may, however, contract with one or more of the Members to provide services to the Company provided that the compensation for these services is comparable to what the Company would have had to pay an unrelated party to provide these services.

ARTICLE VI: ACCOUNTS AND ACCOUNTING

- 6 Method of Accounting. Company books will be maintained on the cash accounting basis in accordance with generally accepted accounting principles; provided that the Company will, to the extent allowed by law, keep books and reports for income tax purposes on the cash basis method of accounting.
- 6.1 Fiscal year. Unless changed by the Members, the fiscal year of the Company for accounting and income tax purposes will be the Calendar year, provided that if the Company is dissolved and the business of the Company is not continued pursuant to ARTICLE IX: DISSOLUTION AND LIQUIDATION, the final fiscal year of the Company will end on the date the Company is terminated.
- 6.2 Quarterly and Annual Statements. The Members will cause quarterly and annual financial statements of the operations of the Company to be prepared. The financial statements will include a balance sheet, income statement, statement of sources and uses of cash and a statement of Members' equity. The report will also include a statement describing financial transactions between the Members and the Company during the quarter, including the services rendered or to be rendered by the Members and the amount of fees, commissions and other compensation received or to be received by the Members and other supporting statements as the Members may deem relevant. To the extent it is feasible to do so, the annual financial statements will be E-mailed to the Members within twenty (20) days after the close of each fiscal quarter.
- 6.3 Income Tax Information. The Members will cause the Company to provide each Member with information on the Company's taxable income or loss and each class of income,



National Expert Witness Network, LLC
 OPERATING AGREEMENT &
 ARTICLES OF ORGANIZATION

gains, loss or deduction that is relevant to reporting Company income under the laws of the State of California or United States in which any Member may be obligated to file income tax returns. The information will show each Member's distributive share of each class of income, gain, loss, deduction or other tax attribute. To the extent it is feasible to do so, the income tax information will be furnished to the Members within seventy-five (75) days after the close of the Company fiscal year.

- 6.4 Accountants. The Members will cause the Company to engage as employees or independent contractors such bookkeepers, accountants and tax advisors as the Members may deem appropriate. The costs of these services will be borne by the Company.
- 6.5 Access to Accounting Records. The Company books and records will be maintained at the Company's principal place of business, except as may be necessary for the convenience of accountants and tax advisors who may temporarily remove portions of the Company's books and records in connection with their work. All Members will have the right on reasonable notice to the Company to either personally or through authorized agents inspect and, at their own expense, copy the books and records of the Company, provided that all Company information must remain confidential and cannot be disclosed to third parties if to do so would prejudice or impair any rights of the Company or its Members.

ARTICLE VII: MEMBERSHIP, MEETINGS, VOTING, INDEMNITY

- 7 Limited Liability and Indemnity. The Members will have liability with respect to liabilities and obligations of the Company equal to the proportionate share of units held by each Member. The Members agree to indemnify and save one another harmless from any liability in connection with the liabilities of the Company above and beyond any Member's proportionate share in same.
- 7.1 Voting Rights. Each Member shall be entitled to vote upon matters affecting the basis structure and business of the Company, including the following matters:
 - 7.1.1 Admission of Members. Admission of Members. The admission of a new Member requires the vote or written consent of the holders of one-hundred percent (100%) of the Company units. This provision is not subject to amendment by less than said percentages;
 - 7.1.2 Termination of the Company;
 - 7.1.3 Development of business activities.
- 7.2 Other Matters. The approval of all other matters as to which Members may or shall vote shall require the vote or written consent of the holders of more than twenty-five percent (25%) of the Company units.
- 7.3 Amendments. Notwithstanding anything to the contrary contained in this AGREEMENT, this Agreement may not be amended without the consent of the holders of more than twenty-five percent (25%) of the Company units.
- 7.4 Voting Procedure. The Members may vote only by written instrument. Written proxies or Powers of attorney to vote Company units will not be honored.
- 7.5 Meeting Rules. Meetings of the Members may be called by the Members or by Members holding more than twenty percent (20%) of the then outstanding Company units, for any matter for which the Members may vote as set forth herein. Upon receipt of a written request, either in person or by registered mail, stating the purpose of the meeting, the



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Members shall provide all Members, within ten (10) days after receipt of such request, written notice (either in person or by registered mail) of a meeting and the purpose of such meeting to be held on a day not less than fifteen (15) nor more than sixty (60) days, after receipt of said request, at a time and place convenient to the Members. Votes taken at a meeting must be in accordance with ARTICLE VII: MEMBERSHIP, MEETINGS, VOTING, INDEMNITY.

ARTICLE VII: TRANSFERS OF MEMBERSHIP INTERESTS

- 8 The Members may sell or otherwise transfer the Company's properties but the consent of all of the Members shall be required in connection with a sale or other transfer of any portion of the holdings of the Company.
- 8.1 Assignment. No Member shall assign (which term as used herein shall include a gift, devise, sale, transfer, encumbrance or other disposition, whether voluntary, involuntary, or by act of law) all or any part of his interest in the Company otherwise than in accordance with the provisions and subject to the limitations of this ARTICLE XI: MISCELLANEOUS PROVISIONS, and any assignment not in accordance with this Section XIII will be void and of no effect. Any Member at any time and from time to time may assign all or any part of his Company interest to any person pursuant to a bona fide written offer, but not until after having first offered it to the Company on the same terms as contained in the bona fide written offer. The Member so desiring to assign all or part of his interest pursuant to this Section XIII shall notify the Company in writing and furnish the Members with a copy of the bona fide written offer.
- 8.2 The Members shall determine whether the Company shall purchase the units. If the assigning Member shall not within thirty (30) days after delivery of this notice receive written notice from the Members that the Company desires to purchase the entire interest to be assigned, the assigning Member may assign this interest pursuant to the bona fide written offer at any time within forty-five (45) days after the termination of the thirty-day period. The assignee will not, however, become a substituted Member except in accordance with ARTICLE XI: MISCELLANEOUS PROVISIONS Admission of Substituted Members. Notwithstanding anything above to the contrary, no assignee, by operation of law or otherwise, of the whole or any portion of a Member's interest will become a substituted Member unless the written consent of all of the Members to such substitution has been obtained and until such assignee shall execute and acknowledge such instruments, in form and substance satisfactory to the Members, as the Members shall deem necessary or desirable to effectuate the admission of such assignee as a substituted Member and to confirm the agreement of such assignee to be bound by all the terms and provisions of this Agreement and the Certificate of Company, as same may be amended; with respect to the interest acquired.
- 8.3 As to assignees who do not become substituted Members or as to assignees before substitution as Members, both the Company and the Members shall be entitled to treat the assignor of any interest in the Company as the absolute owner thereof in all respects, and shall incur no liability for distributions of cash or other property made to him, until such time as the written assignment has been received by and recorded on the books of the

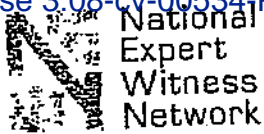


National Expert Wit. Network, LLC
 OPERATING AGREEMENT &
 ARTICLES OF ORGANIZATION

- Company. All reasonable expenses, including solicitors' fees, incurred by the Company in connection with an assignment, shall be borne by the assignee.
- 8.4 A substituted Member shall have all the rights, obligations and liabilities of a Member under this AGREEMENT. An assignee of Company units who does not become a substituted Member shall have none of the rights of a Member under this agreement.
- 8.5 Purchase of Member's Interest. The Members may elect to have the Company purchase a Member's units. This election must be made by delivery of a written notice of its exercise upon the Member or his executor, administrator or other legal representative within ninety (90) days after receipt of written notification by the Company of the Member's intent to sell the Member's interest in the Company.
- 8.6 The Members may elect to have the Company purchase a deceased, bankrupt, incompetent or insane Member's units. This election must be made by delivery of a written notice of its exercise upon the Member or his executor, administrator or other legal representative within ninety (90) days after receipt of written notification by the Company of the Member's death, bankruptcy, incompetence or insanity or at any time if no written notice is given to the Company.
- 8.7 Purchase price. The purchase price to be paid for a Member's interest under this Article shall be equal to the amount that would have been received by that Member if all the assets of the Company had been liquidated in a sale at fair market value on the date of the notice of election to the Member or the date the Member ceased to be a Member, and the proceeds of such liquidation distributed pursuant to the provisions of such section. The purchase price shall not, however, include any amount that might be received for the Company's goodwill, if any.
- 8.8 Fair market value is defined as one times (1x) the gross income received by the Company during the twelve (12) month period preceding receipt of written notification by the Company of the Member's death, bankruptcy, incompetence or insanity or at any time if no written notice is given to the Company.
- 8.9 Manner of Payment. The purchase price for the Member's interest shall be paid as follows:
- 8.10 Ten Percent (10%) within 60 days after the determination thereof;
- 8.11 The balance in full within forty-eight (48) months thereafter at the rate of one-sixteenth (1/16) of the total balance amount each calendar quarter; until paid, this obligation shall be evidenced by a promissory note of the Company bearing interest at the rate per annum allowable by law. The note will provide that the Company may pay all or a part thereof at any time during the term thereof without prepayment penalty

ARTICLE IX: DISSOLUTION AND WINDING UP

- 9 Dissolution Events. The death, bankruptcy, incompetence or insanity of a Member will dissolve or terminate the Company. The sale of all or substantially all of the assets of the Company or the vote of the Members to dissolve the Company also dissolves the Company. In the event that the Company is dissolved and not continued, the Members shall make the necessary arrangements to wind up and terminate the affairs of the Company in accordance with applicable laws.



National Expert Witness Network, LLC
OPERATING AGREEMENT &
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- 9.1 Liquidation Distributions. Upon dissolution, if the Company is not continued, the Company will engage in no further business other than that necessary to wind down the business of the Company and liquidate its assets. Any profit or loss on disposition of Company properties during liquidation shall be allocated in accordance with the provisions of Article VI *Allocation of Profits and Losses* of this AGREEMENT. After retention by the Company of sufficient proceeds to meet and satisfy operating costs and the cost of sale, as determined in the sole discretion of the Members, the proceeds of liquidation (the "Liquidation Distribution") will then be distributed in the following order:
- 9.1.1 Payments to creditors of the Company, other than Members, in the order of priority provided by law;
 - 9.1.2 Payments to Members for loans made by them to the Company;
 - 9.1.3 Distributions shall then be made in accordance with the provisions of Section VIII (1) Available Cash.
- 9.2 If upon liquidation of the Company and distribution of its assets, as provided above, any Member would have a negative balance in his capital account, the negative balance will constitute a debt to the Company and shall be paid in cash by the Member on demand by the Company.

ARTICLE X: BANK ACCOUNTS

- 10 The Company shall open and maintain in the name of the Company accounts with such banks or savings and loan associations as are necessary to effectuate this AGREEMENT and the Company's business. Funds from all such accounts shall be deposited and withdrawn on the signature of one of the Managing Members, or duly authorized representatives of the Members.

ARTICLE X: SUCCESSORS IN INTEREST

- 11 This Agreement shall in all respects bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators or other legal representatives, subject to the provisions of this AGREEMENT limiting rights of assignment and the rights of non-substituted Members.

ARTICLE XI: MISCELLANEOUS PROVISIONS

- 12 Power of Attorney. Each Member hereby irrevocably constitutes and appoints each of the Members with full power of substitution, his true and lawful attorney-in-fact for him and in his name, place and stead, for his use and benefit, to sign, acknowledge, file and record:
- 12.1 The Operating Agreement of the Company and any amendments thereto which are made to reflect amendments to this AGREEMENT or to reflect any reductions in the amount of the contributions of a Member or which are required.
 - 12.2 Any fictitious business name certificate or amendment thereto or other instrument or document which may be required to be filed or recorded by the Company, on its own



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OPERATING AGREEMENT &
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behalf or on behalf of the Members, under the laws of the State of California or any other jurisdiction.

- 12.3 Any document that may be required to effect the continuation of the Company, the admission of a substituted Member or additional Limited or Members, or the dissolution or termination of the Company, and any amendment to this Agreement or the Company's Operating Agreement in connection therewith, provided that such continuation, admission, dissolution, or termination is in accordance with the terms of this Agreement pursuant to the Limited Liability Company Act.
- 12.4 The foregoing provisions do not supersede any other provisions of this AGREEMENT, nor is this power of attorney to be used to deprive any Member of its rights under this AGREEMENT, but is intended only to provide a simplified system for execution, filing and recording of documents and to permit the use of the provisions of the Limited Liability Company Act. The power of attorney granted herein is coupled with an interest, is irrevocable and shall survive any assignment of a Member's interest in the Company.
- 12.5 Amendment of Operating Agreement. An amendment to the Company's Operating Agreement may be signed, personally or by an attorney-in-fact, by:
- 12.5.1 A Member and the new Member if the amendment is caused by the addition of a Member; or
- 12.5.2 A Member, the substituted Member and the transferring Member, if the amendment is caused by the substitution of a Member.
- 12.6 Notices. All notices under this AGREEMENT shall be in writing and shall be given to the parties at the addresses hereinafter set forth and to the Company at its principal office, or at such other address as any of the parties may from time to time specify.
- 12.7 Counterparts. This AGREEMENT may be signed in any number of counterparts, all of which when taken together shall constitute the original instrument.
- 12.8 Severability. In the event that any provision of this AGREEMENT shall be held unenforceable, such provision shall be severed and the remainder of this AGREEMENT shall nevertheless remain in full force and effect.
- 12.9 Gender. All references herein to "he", "him" or "his" shall be deemed where appropriate, references to "she", "her", or "hers" or to "it" or "its".
- 1.42 Applicable Law. This AGREEMENT shall be deemed to be made and performed in, and shall be governed and construed in accordance with the laws of the State of California.



National Expert Witness Network, LLC
OPERATING AGREEMENT &
ARTICLES OF ORGANIZATION

This OPERATING AGREEMENT ("AGREEMENT") is made this 13th day of May, 2004 by and between the undersigned whose names and addresses are set forth below for the purpose of forming a Limited Liability Company.

Dated this 13th Day of May, 2004

IN WITNESS WHEREOF, THE PARTIES HAVE SIGNED THIS AGREEMENT

A handwritten signature in cursive script, appearing to read 'Jennifer Osbelt'.

Date: 6/1/04

Jennifer Osbelt
650 Oak Grove Avenue, Suite 1
Menlo Park, CA 94025
(650) 473-1113

A handwritten signature in cursive script, appearing to read 'Donna K. McDonald'.

Date: 6/4/04

Donna K. McDonald
15309 Northlake Road
Magalia, CA 95954-9052
(530) 873-2620

A handwritten signature in cursive script, appearing to read 'David D. McDonald'.

Date: 6/4/04

David D. McDonald
15309 Northlake Road
Magalia, CA 95954-9052
(530) 873-2620

SCHEDULE "A"**CAPITAL CONTRIBUTIONS OF PARTNERS:**

<u>Partnership Partner</u>	<u>Contribution</u>	<u>Agreed Upon Cash Value of Contribution</u>	<u>Units Credited</u>
David D. McDonald & Donna K. McDonald Jointly	\$100,000.00	\$100,000.00	75
Jennifer Osbelt	\$ 00.00 ⁽¹⁾	\$ 33,333.33	25

Note (1): Jennifer Osbelt's contribution to the PARTNERSHIP is other than cash and consists of years of experience in the Expert Witness Referral industry and client and consultant control that she brings to the Partnership for which she is granted 25 Partnership Units.

EXHIBIT B

From: Dave McDonald [mailto:dmcDonald@newnexperts.com]
Sent: Monday, March 26, 2007 1:22 PM
To: 'Jennifer Osbelt'
Cc: 'Donna Brelsford'
Subject: NEWN

Dear Jennifer:

I personally believe that your wish to buy a house has really clouded your judgment. I think you need to step back and reevaluate your situation. At this point you apparently cannot accept the way in which I run NEWN and the rather substantial draw you receive and accept the fact that the distribution of NEWN profits is what actually comprises your income. The fact you cannot afford a house is simply not my problem nor the problem of NEWN.

You clearly do not trust Donna and I and your contention that there is some hidden checking account is ridiculous. I tell you the QuickBooks register and the US Bank registers are identical and they are reconciled each week by LeAnn Andrews. If there is no trust there is no partnership. This lack of trust is insulting to us completely unwarranted and frankly unacceptable. I think that it is a good idea for you to move on.

Our Operating Agreement provides an exit procedure for you and it sounds like you wish to exercise that option. Section 8 of the Agreement stipulates that all Members have to agree and we do. The Company must determine that we wish to purchase your membership shares; we do. You cannot assign them without our permission. The purchase price for your member shares is also stated in Section 8 that the purchase price is the fair market value is defined as one times (1x) the gross income received by the Company during the preceding twelve (12) months. Payment terms are 10% of the purchase price, i.e., 10% within 60 days after the effective date of the termination of the Agreement; the balance to be paid over 48 months at the rate of 1/16ths of the Principal amount each calendar quarter all secured by promissory note. No interest payment is stipulated in the Agreement.

The value of the company pursuant to Section 8 is provided in the attached QB report:

Sales for 3/1/06 through 3/31/07 is \$7,544,255.18 at value 1X = \$7,544,255.18

Your 25% share = \$1,886,063.80

You will receive payment within 60 days of the termination of your membership in NEWN for \$188,606.38
Each subsequent calendar you will receive payment of 1/16th of the balance of \$1,697,457.42 or \$106,091.09 per quarter.

If you and Chris don't like it here then you can leave and buy a house somewhere else. Don't lose sight of the fact that at the point your membership agreement is terminated your draw and any expense support from NEWN stops. There is nothing in the Agreement regarding continuation of benefits. Health benefits, exclusive of the NEWN funded dental plan, are covered through COBRA for 18 months for which you are financially responsible.

You need to make a decision today about whether or not you are playing on our team or yours. If it is yours then I will have the termination notices ready within a day.

Regards,
Dave McDonald



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15309 Northlake Road
Magalia, CA 95954-9052
530-873-7890, Extension 201
Fax: 530-873-7891

www.newnexperts.com

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This Email and its attachments have been scanned by Norton and found to be virus free.

EXHIBIT C

From: Jennifer Osbelt [mailto:josbelt@newnexperts.com]
Sent: Monday, March 26, 2007 3:24 PM
To: 'dmcdonald@newnexperts.com'
Cc: 'Donna Brelsford'
Subject: RE: NEWN

Dave:

If you want to terminate me just for asking to see the transactions totaling 210,000, then go ahead and fire me. I will take your deal, but not because I asked for it. People that tell me haven't earned what I worked for usually don't receive a good reaction from me, and I don't appreciate being told that I earn more than I am worth. Go ahead and draw up the papers.

Jennifer

From: Dave McDonald [mailto:dmcdonald@newnexperts.com]
Sent: Monday, March 26, 2007 1:22 PM
To: 'Jennifer Osbelt'
Cc: 'Donna Brelsford'
Subject: NEWN

Dear Jennifer:

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Regards,
Dave McDonald



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www.newnexperts.com

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This Email and its attachments have been scanned by Norton and found to be virus free.

EXHIBIT D

Chico Branch
260 E Second Street
Chico, CA 95928
530 896-8380
530 896-8388 fax

April 17, 2007

National Expert Witness Group
Jennifer Osbelt
One Lagoon Drive Suite 140
Redwood City Ca, 94065

Re: Renewal of \$300,000 Revolving line of Credit L# 6517388162

Dear Ms. Osbelt:

The revolving line of credit for National Expert Witness matured April 5, 2007. I understand that you are discussing your option to sell your interest in NEWN but until such action is completed you will be considered a guarantor on this line. We will need the following items from you so that we may complete the renewal of this line. When the sale of your interest is complete we will remove you at that time. Please provide the following information:

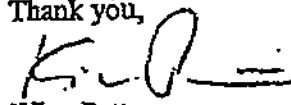
Jennifer Osbelt

- Current personal financial statement (form enclosed)
- Signed Personal Tax Returns for 2005 and 2006

**Per the loan agreement the line must be at a zero balance for 30 consecutive days during the term. This requirement has not been met for this year. Please be aware that the line will need to rest for 30 consecutive days during the next term after approval of the renewal.*

Please forward the above information as soon as possible to my attention. If you have any questions please feel free to call myself at 896-8391 or Tina Haro at 846-7396.

Thank you,



Kiley Patterson
Asst. Relationship Manager
Cc: David McDonald
Tina Haro

EXHIBIT E

From: Jennifer Osbelt [mailto:josbelt@patechnical.com]
Sent: Friday, April 20, 2007 1:42 PM
To: 'dmcdonald@newnexperts.com'
Cc: 'Tom Fisher'; 'Steve Sutter'; 'LeAnn M. Andrews, CPA'; 'dbrelsford@newnexperts.com'
Subject: RE: Partner Distribution

Dave,

As you note in your email, during times when "there wasn't sufficient cash in the NEWN bank account to cover" all of our draws, the LOC was used to cover required draws until the funds were available from operations to cover the advance. It is grossly unfair of you to change this policy at the exact moment you send me a K-1 showing my income as twice that of what I was actually distributed during 2006. Suggesting to the entire working group that I had somehow created this situation, when I have no access to our finances since you deleted my password to the Quickbook system is equally unfair.

However, if you decide to go forward with your policy change, Chris and I will be forced into the position of having to sell our house and moving our family into an apartment to pay the tax bill. In this case, I need an updated timeline on delivery of the draft purchase documents for my LLC interest in NEWN. In your email of March 31, you note that the transaction would be completed in the two weeks after my return, or by May 2, 2007.

As I'm sure you are aware, the acceptance letter you emailed to me (which I executed on March 27, 2007) provides for NEWN's acceptance of my email offer of March 27, 2007 to sell my LLC interests. For your convenience, I've attached my March 27 email. As you can see, my March 27 email expressly accepts your offer of approximately \$1.8 million for my LLC interests (i.e. "I will take your deal"). However, on March 31, 2007, you indicated by email that the purchase price amount would be different based on conversations you had with your legal counsel.

I am hoping you will be able to provide me with an updated offer for your purchase price so that I may re-evaluate my acceptance of the deal in light of your change in the terms of your offer. As I'm sure you are aware, the operating agreement provides me the ability to sell my LLC interests to third parties, as well (giving you the right to match any offer I receive, of course). In light of the situation I have been put in by your change in policy at NEWN, please understand I will have to do what is necessary to ensure I am getting the maximum amount possible for my share in NEWN.

I look forward to receiving the proposed documents soon.

I would also like to exercise my explicit rights under California LLC law for the following:

1. to receive a copy of NEWN's filed tax return
2. copies of the past 6 year's tax returns be promptly delivered to me by the LLC Manager at the LLC's expense.

3. to go there and inspect and copy the past 6 years financial statements and tax returns, and the past 4 years books and records of the LLC as they relate to the internal affairs of the LLC at any time during normal business hours of the LLC.

Does Monday and/or Tuesday work? I assume the company will be open under normal operating hours next week. It will only be Chris, me, and my accountant driving up. Thank you.

Best Regards,

Jennifer Osbelt

EXHIBIT F

From: Chris [mailto:christopher.rodi@gmail.com]
Sent: Saturday, May 05, 2007 11:08 PM
To: dmcdonald@newnexperts.com
Cc: josbelt@patechnical.com; Steve Sutter
Subject: Re: NEWN Line of Credit

Dave,

We are in receipt of your letter. Jennifer has decided it is not prudent to personally guarantee NEWN's line of credit. Since you have removed her from all aspects of NEWN's operations, she now has no knowledge or control over the use of the credit or the underlying assets which secure the credit facility. Further, your failure to comply with the terms of the line of credit over the most recent 12 months, per US Bank's recent communications directly with Jennifer, provides added incentive to ensure she is not a personal guarantor on this line of credit in the future.

As majority holders, it is yours and Donna's decision whether or not a capital call is required. However, until the erroneous K-1's from 2004, 2005 and 2006 are amended NEWN cannot provide a definitive balance for Jennifer's capital account, and therefore cannot make the capital call. As I'm sure you are aware, an accurate capital account balance must be known to ensure that no positive balance is available to offset any capital call amount. Until the corrections are made, you cannot definitely say that no positive balance is available.

We look forward to your determination Tuesday of the timeframe for correcting NEWN's tax returns and capital accounting, and your decision, once the corrections are completed, as to whether or not a capital call is necessary.

Chris

On 5/4/07, Dave McDonald <dmcDonald@newnexperts.com> wrote:

Chris, we have been notified by telephone this afternoon that US Bank is calling the NEWN LOC note. It becomes past due tomorrow. Attached is a letter outlining the situation.

Regards,

Dave McDonald

15309 Northlake Road

Magalia, CA 95954-9052

530-873-7890, Extension 201

Fax: 530-873-7891

www.newnexperts.com

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National Expert Witness Network

May 4, 2007

VIA ELECTRONIC MAIL

Christopher Rodi, Esq.
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304

Dear Chris:

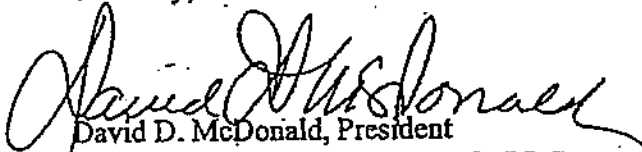
It is my understanding that Jennifer has asked that all communication go through you. If I am mistaken, please advise me immediately, and I will send this letter directly to Jennifer.

We have been advised that US Bank will issue a demand today for the immediate payment in full of the NEWN Line-of-Credit. The LOC was due on April 4th, 2007 and is past due tomorrow. The total amount due as of today including interest is \$264,206.25.

Jennifer's refusal to provide the necessary financial information to US Bank is the direct cause of this note being called. This has caused serious financial problems and we are now trying to determine how to cover this unforeseen expense. The Company is taking into consideration a capital call to the Members to satisfy the NEWN LOC debt. This decision will be made shortly.

For obvious reasons, I am asking Jennifer to reconsider her position and to take all reasonable steps to correct this problem. In all honesty, I do not know if compliance with US Bank's request at this late date will be enough.

Sincerely,



David D. McDonald, President
National Expert Witness Network, LLC

DDM:dm

Original to follow via US Mail



National Expert Witness Network

May 8, 2007

VIA ELECTRONIC MAIL

Ms. Jennifer Osbelt, Member
c/o Christopher Rodi, Esq.
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304

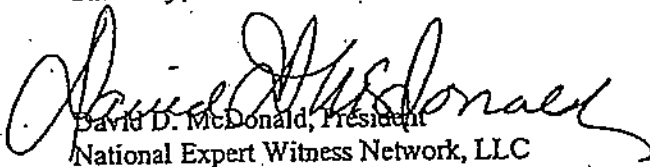
Dear Chris:

Attached hereto is a copy of the US Bank Notice of Default on the NEWN Line of Credit. Jennifer Osbelt's failure to fulfill her Member obligations to NEWN in providing US Bank with the financial information required by the Bank for the renewal of this note has led to this default.

The majority Members have determined that the cash available to the Company is inadequate to meet the demand payment of US Bank. Pursuant to Paragraph 3.1 of the NEWN Articles of Organization, the majority Members of the Company are requesting all Members to provide the required additional cash equal to their pro-rata share of the Company Units. The Capital Call of \$264,419.53 will be used to expire the US Bank Line of Credit. The capitalization of the Company stipulates 75% of this Capital Call is to come from David and Donna McDonald and 25% from Jennifer Osbelt. Ms. Osbelt's Capital Call contribution is therefore \$66,104.88.

In accordance with Paragraph 3.1 of the Articles of Organization, Ms. Osbelt has 15 days from the date of this mailing or notification by the Company to provide any or all or none of her pro-rata share of the additional cash required. All Members are required to participate and provide their pro-rata share within 15 days of this notice, or by 7:30 p.m. May 23rd, 2007.

Sincerely,



David D. McDonald, President
National Expert Witness Network, LLC

DDM:dm

Original to follow via US Mail


EXHIBIT G

From: Dave McDonald [dmcDonald@newnexperts.com]
Sent: Tuesday, May 08, 2007 7:22 PM
To: 'Chris Rodi'; josbelt@patechnical.com
Cc: 'Tom Fisher'; jfr@robinsonwood.com; kiley.patterson@usbank.com
Subject: Notice of NEWN Capital Call
Attachments: image001.png; NEWN LOC call Notice 5-8-07.pdf; US Bank LOC Note Call Notice 5-8-07.pdf

Dear Chris:

Please note my attached letter and the attached US Bank Letter. Time is of the essence. Originals of my letter and a copy of the US Bank letter will follow by FedEx tomorrow for delivery Thursday 5/10/07.,

Regards,
Dave McDonald

 National Expert Witness Network
15309 Northlake Road
Magalia, CA 95954-9052
530-873-7890, Extension 201
Fax: 530-873-7891
www.newnexperts.com

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5/14/2007

Chico Branch
260 E Second Street
Chico, CA 95928
530 896-8380
530 896-8388 fax

May 7, 2007

National Expert Witness Network LLC
15309 Northlake Road
Magalia Ca 95954

RE: NOTICE OF DEFAULT/MATURITY
Obligor No. 5517388162 Obligation No. 26

Dear David & Donna McDonald and Jennifer Osbelt:

National Expert Witness Network LLC is obligated to U.S. Bank National Association pursuant to a revolving line of credit dated as of January 10, 2005 (including any amendments thereto, the "Agreement"), pertaining to the above-referenced obligations (the "Loan"). Capitalized terms use in this letter but not defined herein shall have the meanings as provided in the Agreement.

Bank hereby gives you notice that the Loan matured on April 5, 2007 at which time it became due and payable in full. The failure to pay on the Maturity Date is a default under the Agreement. As of May 7, 2007, the outstanding balance of the Loan, which is now due and payable in full, is \$264,419.53 which consists of principal of \$262,500.00, interest of \$1919.53 and late fees of \$0.

Interest continues to accrue at a per diem rate of \$71.09375 for each day after the Maturity Date that the Loan remains unpaid. The per diem rate will change with any change in a variable interest rate index.

Effective as of the Maturity Date, Bank will not advance any additional funds under the Note.


US Bank hereby gives Borrower notice that the entire unpaid principal balance and all accrued interest and late charges are now due and payable and hereby demands immediate payment thereof. US Bank further reserves the right to exercise each, any and all of the rights and remedies available to US Bank under the Agreement and any and all other documents which evidence the Loan and at law to collect all of the amounts due without further demand, protest, presentation or further notice.

TIME IS OF THE ESSENCE

Please contact me to make arrangements to pay the Loan in full or if you have any questions.

Sincerely,

U.S. BANK NATIONAL ASSOCIATION

A handwritten signature in black ink, appearing to read "Kiley Patterson", with a horizontal line extending to the right.

Kiley Patterson
Asst. Relationship Manager

cc: Tina Haro-Relationship Manager, Liest Schmidt-Senior Lender

EXHIBIT H

From: Chris Rodi [christopher.rod@gmail.com]
Sent: Wednesday, May 09, 2007 2:24 PM
To: dmcDonald@newnexperts.com
Cc: josbelt@patechnical.com; jfr@robinsonwood.com
Subject: Re: Notice of NEWN Capital Call

Dave,

In furtherance of my email below, I learned from your CPA this morning that NEWN will be making adjustments to its 2005 financial statements, and that NEWN's book keeper is reviewing the 2004 financial statements and additional changes are possible. It is noted that Jennifer, as a member of NEWN, was not notified of this development.

In light of the capital call notice you sent to Jennifer on May 8, 2007, and subject to my initial response to such notice copied below, Jennifer requires that you provide her with full descriptions of all adjustments to the 2004 and/or 2005 financial statements. As you are aware, any such changes will render inaccurate the financial records Jennifer has previously been provided by NEWN in her capacity as a member. As described in my email copied below, Jennifer cannot evaluate her options with respect to the capital call until you provide her with the information to which she is entitled, and which NEWN is legally required to accurately maintain. As such, the 15 day response period cannot be initiated until NEWN has provided Jennifer with such information.

Therefore, Jennifer reiterates her request for an updated accounting of NEWN's capital accounts reflecting the amendment of NEWN's 2004, 2005 and 2006 Form K-1's and adds to her request a detailed description of any and all adjustments made to the financial records which NEWN has previously provided to her.

Jennifer wants to comply fully with her obligations under the operating agreement with respect to the capital call, and will do so immediately upon receipt of the required information detailed above. Jennifer would also like to express her worries that NEWN's failure to comply with her repeated requests will result in permanent financial harm to the business.

A copy of this correspondence will be sent to you via mail.

Chris

On 5/8/07, Chris Rodi <christopher.rod@gmail.com> wrote:

Dave,

Jennifer is in receipt of the capital call notice you sent via email on May 8, 2007.

Jennifer strongly wishes to comply fully and immediately with her obligations pursuant to the operating agreement of NEWN. However, as I have repeatedly communicated to you, it is impossible for Jennifer to appropriately evaluate her responsibilities pursuant to any capital call until NEWN has provided her with amended Form K-1's for 2004, 2005 and 2006 (or an accurate accounting from your CPA as to how these tax filings will be amended) so that she can know the actual balance of her capital account with NEWN.

This correspondence serves to explicitly notify NEWN that Jennifer intends to fully comply with the operating agreement with respect to the capital call, but requires the information detailed above before she is able to do so. Until such time as that information is provided, Jennifer is unable to

5/14/2007

There is significant written correspondence to and from you dating back nearly two months indicating that you have been fully aware that NEWN's capital accounts are currently inaccurate. Multiple requests have been made in writing to you requesting that you address this issue. I have even personally spoken to NEWN's CPA, who is fully aware of this issue. Further, just days ago I explicitly explained to you in writing Jennifer's inability to comply with any capital call because of this issue. Instead of addressing this issue, you chose to ignore your duties as NEWN's manager and Chief Executive Officer.

Jennifer will comply with the operating agreement with respect to the capital call immediately upon receipt of the required information detailed above.

A copy of this email will also be delivered to you via mail.

Thank you.

Chris

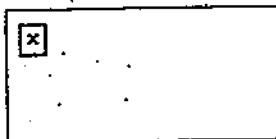
On 5/8/07, Dave McDonald <dmcdonald@newnexperts.com> wrote:

Dear Chris:

Please note my attached letter and the attached US Bank Letter. Time is of the essence. Originals of my letter and a copy of the US Bank letter will follow by FedEx tomorrow for delivery Thursday 5/10/07.,

Regards,

Dave McDonald



15309 Northlake Road

Magalia, CA 95954-9052

530-873-7890, Extension 201

Fax: 530-873-7891

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EXHIBIT I

----- Forwarded message -----

From: Dave McDonald <dmcDonald@newnexperts.com>

Date: May 10, 2007 4:54 PM

Subject: Capital Call

To: Chris Rodi <christopher.rod@gmail.com>

Chris:

The capital call is driven by NEWN's failure to renew the loan pursuant to their Line of Credit terms for which Jennifer refused to comply. The company does not have the capital to pay off this loan. Please refer to Paragraph 3.1 of the Articles of Organization

The need is clear; we have a note called by US Bank. The authority to make this capital call is also clearly outlined in Paragraph 3.1.

Jennifer has 13 days left to provide the additional cash for her pro-rata share, or \$66,104.88.

Regards,

Dave McDonald

15309 Northlake Road

Magalia, CA 95954-9052

530-873-7890, Extension 201

Fax: 530-873-7891

www.newnexperts.com

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EXHIBIT J

303 ALMADEN BOULEVARD, SUITE 500
SAN JOSE, CALIFORNIA 95110
TELEPHONE (408) 291-6200
FACSIMILE (408) 297-6000
WWW.BE-LAW.COM

May 17, 2007

Via Facsimile & U.S. Mail

E. Thom Rumberger, Esq.
Greenberg Traurig
1900 University Avenue, 5th Floor
East Palo Alto, CA 94303

Re: NEWN, LLC and TCLE, LLC

Dear Mr. Rumberger:

This firm represents, and I write on behalf of, Jennifer Osbelt, who holds a 25 percent interest in National Expert Witness Network, LLC ("NEWN") and Technology CLE, LLC ("TCLE"). We understand that you represent David & Donna McDonald, who together hold the remaining 75 percent interest in both NEWN and TCLE. If our understanding as to your affiliation with the McDonalds is incorrect, please so advise and we will communicate directly with them or their counsel.

We write in an effort to begin the process of negotiating an amicable parting of the business relationship between your clients and ours. Ms. Osbelt has determined, based on recent events, that trust and confidence among the parties has deteriorated to such an extent that it is no longer viable to continue the relationship. From correspondence that I have reviewed; I am assuming that your clients have a similar view. Obviously, in order for our client to evaluate her position, she will require complete access to the financial records of both NEWN and TCLE. I trust that once Ms. Osbelt has had an opportunity to conduct such review, the parties will be able to agree upon a mutually agreeable separation agreement.

In that regard, Ms. Osbelt hereby gives reasonable notice under Section 6.5 of the NEWN Operating Agreement as well as Section 4.6 of the TCLE Operating Agreement that she is invoking her rights to inspect and copy the complete books and records of each of these entities. She would like to do so next Monday, May 21 at 10 a.m. at the offices of NEWN and TCLE in Magalia, California. Ms. Osbelt intends to bring a copy service with her to facilitate the copying. Please advise forthwith whether this date and time is convenient or suggest an alternative date and time during the week of May 21.

ANTHONY M. GLASSMAN
BEVERLY HILLS, CA 90210

AFFILIATED COUNSEL:
BERGESON & CAMPBELL
WASHINGTON, D.C. 20005

MARK E. FOSTER
SAN JOSE, CA 95110

E. Thom Rumberger, Esq.

May 17, 2007

Page 2

Please be advised that Ms. Osbelt disputes the propriety of the McDonalds' invocation of Section 3.1 of the NEWN Operating Agreement to require her to make a capital contribution of \$66,104.88 on or before May 23, 2007. It has been, and remains, her position that such action is invalid given that current incorrect and incomplete information provided to Ms. Osbelt regarding NEWN's financial situation and the balance of her capital account.

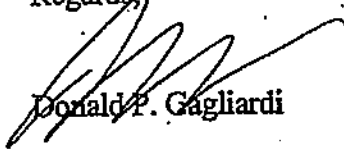
Ms. Osbelt is concerned that the McDonalds may have breached the Agreement with, and their fiduciary to, Ms. Osbelt in numerous respects, including, but not limited to, thus far denying her access to NEWN's financial records; refusing to provide her with details concerning NEWN's loans; excluding her from any management of NEWN; and providing incorrect information to NEWN's accountants which has in turn caused the accountants to prepare and file incorrect financial statements and tax returns. In addition, the McDonalds' actions have exposed Ms. Osbelt to potential personal liability to the IRS and NEWN's creditor, U.S. Bank.

We would be grateful if you would consult your clients as to their willingness to resolve the present situation as amicably as possible; and provide Ms. Osbelt with access the books and records of NEWN and of TCLE as requested herein.

The foregoing does not constitute, and should not be construed as, a waiver by Ms. Osbelt of any of her rights and remedies under the various agreements, which rights and remedies are hereby expressly reserved. While Ms. Osbelt would prefer to extricate herself from her relationship with the McDonalds without resort to litigation, she will take whatever steps are necessary to protect her rights, interests and reputation.

We look forward to hearing from you as soon as possible.

Regards,



Donald P. Gagliardi

EXHIBIT K

BERGESON, LLP
ATTORNEYS AT LAW
303 ALMADEN BOULEVARD, SUITE 500
SAN JOSE, CALIFORNIA 95110
TELEPHONE (408) 291-8200
FACSIMILE (408) 297-6000
WWW.BE-LAW.COM

May 21, 2007

Via Facsimile & U.S. Mail

E. Thom Rumberger, Esq.
Greenberg Traurig
1900 University Avenue, 5th Floor
East Palo Alto, CA 94303

Re: NEWN, LLC and TCLE, LLC

Dear Todd:

At your request, my colleague, Marc van Niekerk, and I came to your offices on Friday 18, 2007 to meet with you and Fred Adam. At that meeting, you indicated that your clients, the McDonalds, wanted to resolve the issues with Ms. Osbelt as a matter of urgency. In fact, you stated that their goal was to have an agreement for terminating their business relationship in place by Friday, May 25, and that they would make a proposal for buying out Ms. Osbelt's interests in NEWN and TCLE and that they would provide her with all necessary documentation for her to evaluate the proposal and assess her interest in the two limited liability companies. It is therefore curious that we have received no response to my e-mail to Mr. Adam, copied to you, sent Friday afternoon confirming that our client requires, as she has previously discussed with Dave McDonald and she has previously been promised, that NEWN's and TCLE's tax returns be amended to reflect the correct allocation of income among members and that she be allowed to review the draft amendments before they are filed.

Further, at our meeting at your offices on Friday morning, May 18, we informed you that Ms. Osbelt required documentary support for the \$260,000 loan from US Bank. Although you undertook to obtain this and provide it to us, you have not done so.

It is apparent from the foregoing and the letter from your colleague, William Goines, sent after business hours on the evening of Friday, May 18, that the McDonalds have no intention of conducting a negotiation in good faith but are intent on continuing to prevent Ms. Osbelt from exercising her rights under the operating agreements between her and the McDonalds.

Moreover, apart from receiving one copy of QuickBooks records, we have heard nothing from you regarding scheduling our client's inspection of NEWN's and TCLE's

ANTHONY M. GLASSMAN
BEVERLY HILLS, CA 90210

AFFILIATED COUNSEL
BERGESON & CAMPBELL
WASHINGTON, D.C. 20005

MARK E. FOSTER
SAN JOSE, CA 95110


BERGESON, LLP

E. Thom Rumberger, Esq.
May 21, 2007
Page 2

financial books and records. Our client has repeatedly requested access to the books and records, including in an e-mail dated April 20, 2007, and we re-iterated the request to you in our letter of May 17, 2007.

Please regard this letter as the final request by Ms. Osbelt for a full inspection of the complete books and records of NEWN and TCLE. She will be attending the offices of NEWN and TCLE in Magalia, California at 10 a.m. on Thursday, May 24, 2007 to review and copy the complete books and records of NEWN and TCLE. In the event that your client does not allow full access to such books and records, we have been instructed to move for an appropriate court order compelling such access.

Regards,



Donald P. Gagliardi

EXHIBIT L

—Original Message—

From: AdamF@gtlaw.com [mailto:AdamF@gtlaw.com]

Sent: Tuesday, May 22, 2007 11:33 AM

To: Donald P Gagliardi; Marc van Niekerk

Cc: RumbergerT@gtlaw.com; Gail C. Simmons; Virginia Ross; goinesw@gtlaw.com; TognoliniL@gtlaw.com

Subject: RE: NEWN - Data Files

Don,

I am in receipt of your correspondence dated May 21, 2007. I advise you as follows:

1. The amended returns are in process;
2. As stated during our meeting, and as followed up on Friday afternoon via email, all data entries for the years in issue are reflected in Quickbooks, including the US Bank credit line inflow of funds from NEWN to TCLE, constituting the debt TCLE owes to NEWN, and can be ascertained therein--further, it is NEWN's assertion that such information and descriptions have been provided and that your client is, and has been, in possession of information responsive to these requests for some time; and
3. During our Friday meeting we had advised you that the Magalia location was not an option since the office is located in the home of NEWN's principal, but we offered a neutral location in the form of NEWN's accounting firm's offices (Matson Isom), we also expressed that we needed an express list of information that was being requested (in addition to the capital account and US bank info). You stated you would check with your client regarding Matson Isom an alternate location and the information request list. I was waiting for that information from you so I could work with our client to schedule time at the Matson Isom offices to present the requested records. Please advise.

Regards,

Fred

Fred Adam

Greenberg Traurig, LLP|Attorneys at Law|Silicon Valley Office|1900 University Avenue|5th Floor|East Palo Alto, CA 94303 Telephone Direct 650.289.7880|Fax 650.462.7880|adamf@gtlaw.com

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Case 3:08-cv-00534-RJH Document 1-16 Filed 01/24/2008 Page 8 of 108
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EXHIBIT M

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SAN JOSE, CALIFORNIA 95110
TELEPHONE (408) 291-6200
FACSIMILE (408) 297-6000
WWW.BE-LAW.COM

May 22, 2007

Via Facsimile

Fred Adam, Esq.
Greenberg Traurig
1900 University Avenue, 5th Floor
East Palo Alto, CA 94303

Re: NEWN, LLC and TCLE, LLC

Dear Fred:

This responds to your e-mail of earlier today.

We note that you say that the amended returns are "in process." Until your firm became involved, NEWN's accountants had agreed, after many weeks of requests by Ms. Osbelt, to provide amended draft returns by last Friday, May 18th. You informed us that when you became involved, you advised your clients to have the process suspended. Inasmuch as you told us that you had only been retained by the McDonalds on or about May 16th, we cannot understand the present delay. Please provide us with a date certain by which the amended returns will be completed.

Our client is entitled to, and has repeatedly requested, access to the financial books and records of NEWN and TCLE. Given the way in which this matter is proceeding and the distance that our client will have to travel to conduct the inspection, we do not propose to limit the review to any specific documents.

Moreover, we have repeatedly advised you that QuickBooks data entries in no way satisfy our client's right to inspection of NEWN's and TCLE's financial books and records. Our client requires, and is entitled to, access to the source documents from which the data is compiled. This would include, but is not limited to:

- 1) The last three years of check registers, cancelled checks, and transactional history for all NEWN's banking accounts in the form of banking statements, or online banking printouts;

BERGESON, LLP
Fred Adam, Esq.
May 22, 2007
Page 2

- 2.) The last three years of check registers, cancelled checks, and transactional history for all TCLE's banking accounts in the form of banking statements, or online banking printouts;
- 3.) All information and documents pertaining to NEWN's 401K and Profit Sharing Plans, including all distribution amounts and transactional history, and especially the correspondence to the investment firm requesting Ms. Osbelt's removal as Trustee;
- 4.) The transactional history for all McDonald "loans" to the company, including cancelled checks, wire transfers, banking statements, and any and all documentary proof any amounts the McDonald's contend that they advanced to NEWN and/or TCLE.
- 5.) All TCLE Line of Credit statements from US Bank;
- 6.) All of the correspondence from US Bank to the McDonalds concerning the Line of Credit defaults;
- 7.) The last three years of US BANK credit card expenses; and
- 8.) The last three years of expense reports for the McDonalds, and copies of documents reflecting reimbursement thereof.

Your clients elected to run the business, of which Ms. Osbelt is part owner, from their home. Any resulting discomfort that the McDonalds might experience because of this choice is a problem of their own making. It is certainly not impossible for the inspection to take place there as you seem to suggest. We have no doubt that any production which takes place at a place other than where the books and records are normally kept, will be incomplete, and must accordingly advise you will not be agreed to.

As I notified you in my letter of May 21, Ms. Osbelt, will be attending the offices of NEWN and TCLE in Magalia, California at 10 a.m. on Thursday, May 24, 2007 to review and copy the complete books and records of NEWN and TCLE. Please advise us whether we need to involve the court in order to enforce or client's rights.

We look forward to hearing from you as soon as possible.

Regards,



Donald P. Gagliardi

EXHIBIT N

Marc van Niekerk

From: AdamF@gtlaw.com
Sent: Wednesday, May 23, 2007 6:40 PM
To: Marc van Niekerk
Subject: RE: NEWN

Hope to get you a response to document request later tonight, pulling together the relevant facts. regards,

Fred Adam

Greenberg Traurig, LLP|Attorneys at Law|Silicon Valley Office|1900 University Avenue|5th
Floor|East Palo Alto, CA 94303
Telephone Direct 650.289.7880|Fax 650.462.7880|adamf@gtlaw.com

Albany ~ Amsterdam ~ Atlanta ~ Boca Raton ~ Boston ~ Brussels ~ Chicago ~ Dallas ~
Denver ~ Fort Lauderdale ~ Houston ~ Las Vegas ~ London ~ Los Angeles ~ Miami ~
Milan ~ New Jersey ~ New York ~ Orange County ~ Orlando ~ Rome ~ Philadelphia ~
Phoenix ~ Sacramento ~ Silicon Valley ~ Tallahassee ~ Tokyo ~ Tysons Corner ~
Washington, D.C. ~ West Palm Beach ~ Wilmington ~ Zurich

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EXHIBIT O

Marc van Niekerk

From: Marc van Niekerk
Sent: Wednesday, May 23, 2007 8:06 PM
To: AdamF@gtlaw.com
Cc: Donald P Gagliardi; Virginia Ross
Subject: NEWN
Importance: High

Fred:

We have still not received confirmation from you that our client will have access to the books and records tomorrow. Please let me know by return so that our client does not travel all the way to Magalia in only to be refused access.

Marc

Marc G. van Niekerk, Esq.
Bergeson, LLP
303 Almaden Blvd
Suite 500
San Jose, CA 95110
Telephone: 408 291-6200 Main
Telephone: 408 291-6219 Direct
Facsimile: 408 297-6000

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6/5/2007

EXHIBIT P

Marc van Niekerk

From: AdamF@gtlaw.com
 Sent: Wednesday, May 23, 2007 8:12 PM
 To: Marc van Niekerk
 Cc: Donald P Gagliardi; Virginia Ross; RumbergerT@gtlaw.com
 Subject: Re: NEWN

I am on blackberry and our system has been down thus hampering getting out the response. I'll send a more detailed response later tonight, but tomorrow won't work due to too short notice for scheduling, but we are trying to schedule early Friday. Please have your clients pencil in early Friday.

Fred Adam
 Greenberg Traurig LLP
 Silicon Valley Office
 Ph: 650 289-7880
 Fax: 650 462-7880
 Cell: 415 846-7992

— Original Message —

From: Marc van Niekerk <mvanniekerk@be-law.com>
 To: Adam, Fred (Shld-SV-TX/T&E)
 Cc: Donald P Gagliardi <dgagliardi@be-law.com>; Virginia Ross <VRoss@be-law.com>
 Sent: Wed May 23 20:06:01 2007
 Subject: NEWN

Fred:

We have still not received confirmation from you that our client will have access to the books and records tomorrow. Please let me know by return so that our client does not travel all the way to Magalia in only to be refused access.

Marc

Marc G. van Niekerk, Esq.
 Bergeson, LLP
 303 Almaden Blvd
 Suite 500
 San Jose, CA 95110
 Telephone: 408 291-6200 Main
 Telephone: 408 291-6219 Direct
 Facsimile: 408 297-6000

Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

Case 0:06-cv-00534-JH Document 1-16 Filed 01/24/2008 Page 94 of 108
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The information transmitted in this e-mail is for the sole use of the above individual or entity and may contain privileged and/or confidential information that may be exempt from disclosure under law. Do Not Forward This Email. Any dissemination, distribution or copying of this communication is strictly prohibited. If this e-mail has been transmitted to you in error, please notify the person listed above immediately, and return the original message to the sender. 2006 Bergeson, LLP [All Rights Reserved].

EXHIBIT Q

Greenberg Traurig

May 24, 2007.

VIA ELECTRONIC MAIL AND FACSIMILE

Donald P. Gagliardi, Esq.
BERGESON, LLP
Attorneys At Law
303 Almaden Boulevard, Suite 500
San Jose, California 95110-2712
Email: dgagliardi@bc-law.com

Re: NEWN, LLC and TCLE, LLC

Dear Mr. Gagliardi:

We are in receipt of your letter dated May 22, 2007 regarding the request by your client, Jennifer Osbelt, to inspect the financial books and records of NEWN, LLC ("NEWN") and Technology CLE, LLC ("TCLE," and collectively, the "Companies" or "our client").

You requested a date certain by which the amended returns will be completed. Our client anticipate and are working with Matson-Isom, the companies' CPA, diligently to try to complete the amended returns by Friday, May 25, 2007.

We respond to each of your specific requests for source documents as follows:

1. Check registers, cancelled checks and transactional history for NEWN.

As our client has clearly communicated to your client on several occasions in the past, NEWN's check registers are maintained solely in QuickBooks.

Canceled checks must be obtained from US Bank. NEWN is not required under the operating agreement or applicable law to bear the cost of obtaining copies of the checks from the bank; such expense is for your client to incur if she chooses. Our client has, however, contacted US Bank on your client's behalf in respect of this request, and has been informed that US Bank charges \$6.00 per statement and \$2.00 per check. We understand that the bank's standard procedure is to send a confirming letter after the request is made and before the bank begins the scanning process. We have been informed that it takes about two weeks to obtain the documents.

According to our client's best calculations, obtaining all canceled checks and statements from January 1, 2004 through May 1, 2007 would cost approximately \$7,312 (approximately 41 statements @ \$6 per statement = \$246.00; approximately 3,533 checks @ \$2 per check = \$7,066.00).

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NEW YORK
ORANGE COUNTY, CA
ORLANDO
PHILADELPHIA
PHOENIX
SILICON VALLEY
TALLAHASSEE
TYSONS CORNER
WASHINGTON, D.C.
WEST PALM BEACH
WILMINGTON
ZURICH

May 24, 2007

Page 2

Perhaps if your client can provide more specific information as to what checks and statements you are seeking (based presumably upon her review of the Quickbooks files she has), that may reduce her costs.

Regarding "transactional history," please advise as to what specific information your client is seeking in addition to the check registers and canceled checks. Otherwise, as our client has stated in the past numerous times, the transactional history reflected in Quickbooks is the most thorough and complete history that the company has and can provide.

2. Check registers, cancelled checks and transactional history for TCLE.

This is a duplicate Question #1 in respect of TCLE, please see our response to #1 above as the answers are the same.

3. NEWN's 401(k) and profit sharing plans

As a trustee of the NEWN 401(k) plan, Ms Osbelt has had full access to, and has been fully provided, the requested information.

4. Canceled checks, wire transfers and banking statements for McDonald loans

The requested information was provided to Ms. Osbelt on 3/25/07 at 10:11 p.m. in a detailed eight-page accounting report.

5. TCLE line of credit statements

TCLE has no line of credit.

6. Correspondence re: line of credit defaults

Ms. Osbelt was a signatory on the original and first renewal of the NEWN line of credit with US Bank and has been provided previously with copies of the requested correspondence.

7. Last three years of US Bank credit card expenses

Our client is in the process of gathering and scanning this information, however, again, we understand that the full detail of these transactions appear in the Quickbook records provided previously.

May 24, 2007

Page 3

8. Last three years of expense reports for the McDonalds

Our client is in the process of gathering and scanning this information. Additionally and as part of the review of expense reports, NEWN is reviewing and auditing the expense reports of all members, including those submitted by Ms. Osbelt. Your client should be aware that the company's and its CPA's review of these reports and resulting reimbursements to date has revealed serious discrepancies and abuses in her requests for reimbursements; specifically, she submitted duplicate and even triplicate expense requests that were paid in good faith by the company, resulting in her actually profiting from what should have been just reimbursement.

You informed us that your client intends to appear at the offices of NEWN and TCLE on May 24, 2007 at 10:00 a.m., which happens to currently be the personal residence of the McDonalds. As you were informed by me via e-mail on May 23, 2007, May 24 at 10:00 am was not possible due to scheduling issues. Also, due to the current situs of the company's offices and the deterioration in the relationship between Ms. Osbelt and the McDonalds, our client has attempted to be responsive to Ms. Osbelt's specific requests for documents and has provided the same. As it is our client's sincere belief that the records and other materials either provided by our client to date, or already in Ms Osbelt's possession, comply with your client's document request, our client can only conclude that Ms. Osbelt's purpose for a visit to their home is directed more to harass and delay, than to actually obtaining further information that relates to her interest as a member of NEWN and TCLE. As such, we have been directed to inform you that unless we have received executed signature pages to the Settlement Agreement and Release of Claims, the Repurchase Agreement, and the exhibits attached thereto by 10:30AM, tomorrow, Friday, May 25, 2007, then our client's offer of settlement contained therein will be withdrawn. The amended and corrected return and 1099 filing information are to be filed Friday afternoon as well.

If you have any questions, please do not hesitate to contact me at (650) 289-7880. Please direct any and all responses to this correspondence to William Goines in our offices.

Very truly yours,



FREDERIC J. ADAM, ESQ.

cc: David McDonald
William Goines
Todd Rumberger

EXHIBIT R

BERGESON, LLP
ATTORNEYS AT LAW
303 ALMADEN BOULEVARD, SUITE 500
SAN JOSE, CALIFORNIA 95110
TELEPHONE (408) 291-6200
FACSIMILE (408) 297-6000
WWW.BE-LAW.COM

May 25, 2007

Via Email

William Goines, Esq.
Greenberg Traurig
1900 University Avenue, 5th Floor
East Palo Alto, CA 94303

Re: NEWN, LLC and TCLE, LLC

Dear Mr. Goines:

This responds to your Fred Adam's letter of May 24, 2007 in which he requested that any response be addressed to you.

In the first instance, please confirm that the amended returns will not be filed until Ms. Osbelt has had an opportunity to review them, as has been repeatedly requested and agreed to.

Secondly, it is apparent from your responses to our requests for access to financial books and records that your clients are providing you with incorrect information.

1. Cancelled Checks and Bank Statements

US Bank provides NEWN and TCLE with online access to the account, including the facility to view and print statements and cancelled checks at no cost. As a co-owner of NEWN, Ms. Osbelt is entitled to access to the account. In addition, the bank provides NEWN with monthly hardcopy statements. If your clients remain unwilling to provide us with the records requested, please provide us with the on-line password so that our client may obtain them herself directly from the bank.

2. NEWN's 401(k) and profit sharing plans

Your clients wrongfully and, without notice to our client, removed her as trustee of the plan in Mid-April. Please provide the requested information.

ANTHONY M. GLASSMAN
BEVERLY HILLS, CA 90210

AFFILIATED COUNSEL:
BERGESON & CAMPBELL
WASHINGTON, D.C. 20005

MARK E. FOSTER
SAN JOSE, CA 95110

BERGESON, LLP

William Goines, Esq.

May 25, 2007

Page 2

3. Canceled checks, wire transfer and banking statements for McDonald loans

The "detailed eight-page accounting report" referred to by Mr. Adam did not contain a single source document. Please provide the requested source documents, not tables prepared by Mr. McDonald.

4. TCLE Line of Credit Statements

Mr. McDonald has consistently referred to the line of credit with US Bank as the "TCLE Line of Credit". See, for instance, the 2007 Business Plan prepared by McDonald. In fact, the purpose of the line of credit was to fund the start-up of TCLE. Please provide the requested information.

5. Correspondence re: Line of Credit Default

Our client denies that she has been provided with all notices of default sent to your clients. If you have evidence to the contrary, please provide it. US Bank has advised Ms. Osbelt that the McDonalds were being sent default notices and LOC renewal notices for some time prior to the deadline on April 4th. The first notice Ms. Osbelt received was on April 18th, 2007. Please provide the requested information.

Mr. Adam's letter also contains an allegation that our client submitted false expense reports to NEWN. Our client views this allegation as defamatory and expressly reserves her right to respond at an appropriate time. Ms Osbelt furthermore reserves her right to take the appropriate action against your clients. We have also been advised that Mr. McDonald is contacting NEWN clients and advising them that Ms. Osbelt has left NEWN "to have babies." Kindly advise your client to immediately cease disseminating false information. Our client's rights in this regard are similarly reserved.

Finally, and to the extent that the demand warrants mention, our client has no intention of signing the incomplete draft documents that you provided to us by e-mail on March 23, 2007.

We look forward to hearing from you as soon as possible.

Sincerely,



Marc G. van Niekerk

EXHIBIT S

Greenberg Traurig

William J. Golnes
Tel. 650.288.7880
Fax 650.482.7880
wgolnes@gtlaw.com

May 30, 2007

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

Marc G. van Niekerk, Esq.
BERGESON, LLP
Attorneys At Law
303 Almaden Boulevard, Suite 500
San Jose, California 95110-2712

Re: NEWN, LLC and TCLE, LLC

Dear van Niekerk:

We are in receipt of your letter dated May 25, 2007 regarding the request by your client, Jennifer Osbelt, to inspect the financial books and records of NEWN, LLC ("NEWN") and Technology CLE, LLC ("TCLE," and collectively, the "Companies" or "our client").

Please provide us with a list of available dates in the next two to three weeks when Ms. Osbelt's accountant would be available to meet at Matson-Isom in Chico, California. We will need to coordinate Ms. Osbelt's schedule along with the schedules of the tax and bookkeeping CPA's so the more days Ms. Osbelt can provide the easier it should be to schedule a date. We anticipate starting at 9:00 a.m. to accommodate Ms. Osbelt's questions. Please be advised that Ms. Osbelt will be charged for Matson-Isom time, facilities, copying costs, as well as time spent by the CPA, LeAnn Andrews. Donna and possibly David McDonald will attend the review, and the proceedings will be recorded.

The following is a response to each of your specific requests for source documents:

1. Check registers, cancelled checks and transactional history for NEWN.

Paragraph 6.5 of the Operating Agreement permits Ms. Osbelt to view company records at her expense, but does not allow her online access to NEWN's US Bank account. As set forth in our letter of May 24, 2007, our client has contacted US Bank to assist Ms. Osbelt in ordering these records and provided you with an estimate of costs.

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ATLANTA
BOCA RATON
BOSTON
CHICAGO
DALLAS
DENVER
FORT LAUDERDALE
LOS ANGELES
MIAMI
NEW JERSEY
NEW YORK
ORANGE COUNTY, CA
ORLANDO
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TALLAHASSEE
TYSONS CORNER
WASHINGTON, D.C.
WEST PALM BEACH
WILMINGTON
ZURICH

www.gtlaw.com

May 30, 2007

Page 2

Again, if Ms. Osbelt has specific information as to what checks and statements she is seeking based upon her review of the Quickbooks files, that may reduce her costs.

We note that your letter did not provide the requested clarification of the term "transactional history". Please advise as to what specific information, if any, your client is seeking in addition to the check registers and canceled checks.

2. NEWN's 401(k) and profit sharing plans

While she was a trustee Ms. Osbelt had full access to, and has been fully provided, the requested information. If she would like another copy of the 401(k) documentation she should direct her request to the plan administrator, Bidwell Consulting.

3. Canceled checks, wire transfers and banking statements for McDonald loans

The eight-page accounting report provided to Ms. Osbelt on 3/25/07 at 10:11 p.m. sufficiently fulfills Ms. Osbelt's request.

4. TCLE line of credit statements

TCLE has no line of credit with US Bank. The line of credit referenced in the 2007 Business Plan was with NEWN, who wrote checks to TCLE and now owes NEWN \$360,000.

5. Correspondence re: line of credit defaults

US Bank default correspondence was provided to Ms. Osbelt as email attachments on 5/8/2007 to Chris Rodi, Esq.

6. Expense Reports

Our client has been auditing expense reports and has come across numerous examples of duplicate expense requests submitted by Ms. Osbelt. We are in the process of determining whether this is a result of careless accounting or if it indicates a pattern of defrauding the company.

7. Departure Description

NEWN is open to hearing Ms. Osbelt's suggestions for how to describe her departure to consultants and clients.

May 30, 2007
Page 3

8. Amended Tax Returns

The Articles of Organization do not grant minority members the right to review and/or comment on tax reporting. Ms. Osbelt received the revised bookkeeping records that provided her with the taxable income statements in Quickbooks.

If you have any questions, please do not hesitate to contact me at (650) 289-7860.

Very truly yours,



William J. Goines, Esq.

EXHIBIT T

November 15, 2007

VIA OVERNIGHT MAIL

David and Donna McDonald
15309 Northlake Road
Magalia, CA 95954-9052

Dear David and Donna,

It has recently come to my attention that you have caused NEWN to enter into "consulting agreements" with yourselves for CEO and bookkeeping services. You failed to provide me with an opportunity to review or approve of these purported agreements. As a member and manager of NEWN, and especially as the only disinterested member and manager with regard to these purported agreements, it was imperative that, on behalf of NEWN, I had the opportunity to review and approve these agreements to ensure that they were in the best interests of the company and fair to all members.

As a member and manager of NEWN, I request a copy of these purported agreements and all documents and information concerning any payments made to you to date. Notwithstanding my request, based on the information learned to date, the purported agreements do not appear to be in the best interests of the company nor fair to other members. In fact, it appears that you have used these purported agreements to drain company assets and to deprive other members of any profits. These purported agreements have not been approved or ratified by NEWN or myself and will not be approved by NEWN or myself. These purported self-dealing agreements are void, and, on behalf of NEWN, I demand that you cease and desist from paying yourselves any further compensation under these purported agreements and return all monies and payments already received thereby.

Similarly, your recent capital call was made without the input of all members, including myself, or even the opportunity to provide input. Once again, it appears to have been the unilateral decision of you, David McDonald. As such, the capital call is invalid. Furthermore, it appears under the circumstances that no capital call was required. You have diverted company assets, without proper authorization or approval, from NEWN to your personal accounts. Once these assets are returned, NEWN will have sufficient funds to meet its debt obligations; thus, obviating the need for any capital call.

Nonetheless, if you still believe that a capital call is required, I would reiterate my demand for inspection of all books and records as well as accounting and bank statements. Upon receiving access to this information, I would in a better position to have an informed discussion about the merits of a capital call.

Lastly, you recently sent over a proposed amended operating agreement. In light of the circumstances in existence at the time of this purported amendment, it was clearly unreasonable and unfair. Please be advised that I do not approve of the proposed agreement and do not intend sign it.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Osbelt", written in a cursive style.

Jennifer Osbelt

JOSEPH W. COTCHETT (36324)
jcotchett@cpmlegal.com
ARA R. JABAGCHOURIAN (205777)
ajabagchourian@cpmlegal.com
SEAN E. PONIST (204712)
sponist@cpmlegal.com

COTCHETT, PITRE & McCARTHY
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577

Attorneys for Plaintiff Jennifer Osbelt

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

JENNIFER OSBELT,

Plaintiff,

v.

DAVID D. McDONALD, DONNA K.
MCDONALD, NATIONAL EXPERT
WITNESS NETWORK, a California Limited
Liability Company; and DOES 1-10, inclusive,

Defendants.

Case No. CIV463528

PROOF OF SERVICE

DAVID D. McDONALD; DONNA K.
McDONALD; NATIONAL EXPERT
WITNESS NETWORK, a California Limited
Liability Company; TECHNOLOGY CLE, a
California Limited Liability Company,

Cross-Complainants,

v.

JENNIFER OSBELT, individually and doing
business as PALO ALTO TECHNICAL, and
ROES 1-10, inclusive,

Cross-Defendants.

Jennifer Osbelt, v. David D. McDonald, Donna K. McDonald, et al.
 San Mateo Superior Court CIV 463528

PROOF OF SERVICE

I am employed in San Mateo County, which is where service of the document(s) referred to below occurred. I am over the age of 18 and not a party to the within action. My business address is Cotchett, Pitre & McCarthy, San Francisco Airport Center, 840 Malcolm Road, Suite 200, Burlingame, California 94010. I am readily familiar with Cotchett, Pitre & McCarthy's practices for the service of documents. On this date, I served a true copy of the following document(s) in the manner listed below:

1. **PLAINTIFF'S EX PARTE APPLICATION FOR AN ORDER GRANTING LEAVE TO AMEND COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF SEAN E. PONIST;**
2. **STIPULATION AND ORDER GRANTING LEAVE FOR PLAINTIFF TO FILE A FIRST AMENDED COMPLAINT;**

BY MAIL: I am readily familiar with this firm's practice for collection and processing of correspondence for mailing. Following that practice, I placed a true copy of the aforementioned document(s) in a sealed envelope, addressed to each addressee, respectively, as specified below. The envelope was placed in the mail at my business address, with postage thereon fully prepaid, for deposit with the United States Postal Service on that same day in the ordinary course of business.


XX BY OVERNIGHT COURIER SERVICE: I am readily familiar with this firm's practice for causing documents to be served by overnight courier. Following that practice, I caused the sealed envelope containing the aforementioned document(s) to be delivered via overnight courier service to the addressee(s) specified below:

William J. Goines
 Karen Rosenthal
 Cindy Hamilton
GREENBERG TRAUIG, LLP
 1900 University Avenue, Fifth Floor
 East Palo Alto, CA 94303
 Tel.: (650) 328-8500
 Fax: (650) 328-8508

*Attorneys for David D. McDonald,
 Donna K. McDonald,
 National Expert Witness Network;
 and Technology CLE*

BY HAND DELIVERY: I am readily familiar with this firm's practice for causing documents to be served by hand delivery. Following that practice, I caused the sealed envelope containing the aforementioned document(s) to be hand delivered to the addressee(s) specified below.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Burlingame, California, on December 4, 2007.


 Linda A. Clark

1 JOSEPH W. COTCHETT (36324)
2 jcotchett@cpmlegal.com
3 ARA R. JABAGCHOURIAN (205777)
4 ajabagchourian@cpmlegal.com
5 SEAN E. PONIST (204712)
6 sponist@cpmlegal.com
7 **COTCHETT, PITRE & McCARTHY**
8 840 Malcolm Road, Suite 200
9 Burlingame, CA 94010
10 Telephone: (650) 697-6000
11 Facsimile: (650) 697-0577

12 Attorneys for Plaintiff Jennifer Osbelt

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF SAN MATEO**

15 JENNIFER OSBELT,

16 Plaintiff,

17 v.

18 DAVID D. McDONALD, DONNA K.
19 McDONALD, NATIONAL EXPERT
20 WITNESS NETWORK, a California Limited
21 Liability Company; and DOES 1-10, inclusive,

22 Defendants.

23 DAVID D. McDONALD; DONNA K.
24 McDONALD; NATIONAL EXPERT
25 WITNESS NETWORK, a California Limited
26 Liability Company; TECHNOLOGY CLE, a
27 California Limited Liability Company,

28 Cross-Complainants,

29 v.

30 JENNIFER OSBELT, individually and doing
31 business as PALO ALTO TECHNICAL, and
32 ROES 1-10, inclusive,

33 Cross-Defendants.

Case No. CIV463528

AMENDED PROOF OF SERVICE

Jennifer Osbelt, v. David D. McDonald, Donna K. McDonald, et al.
 San Mateo Superior Court CIV 463528

PROOF OF SERVICE

I am employed in San Mateo County, which is where service of the document(s) referred to below occurred. I am over the age of 18 and not a party to the within action. My business address is Cotchett, Pitre & McCarthy, San Francisco Airport Center, 840 Malcolm Road, Suite 200, Burlingame, California 94010. I am readily familiar with Cotchett, Pitre & McCarthy's practices for the service of documents. On this date, I served a true copy of the following document(s) in the manner listed below:

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2. **STIPULATION AND ORDER GRANTING LEAVE FOR PLAINTIFF TO FILE A FIRST AMENDED COMPLAINT;**
3. **FIRST AMENDED COMPLAINT;**

BY MAIL: I am readily familiar with this firm's practice for collection and processing of correspondence for mailing. Following that practice, I placed a true copy of the aforementioned document(s) in a sealed envelope, addressed to each addressee, respectively, as specified below. The envelope was placed in the mail at my business address, with postage thereon fully prepaid, for deposit with the United States Postal Service on that same day in the ordinary course of business.

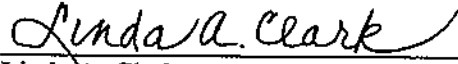
XX BY OVERNIGHT COURIER SERVICE: I am readily familiar with this firm's practice for causing documents to be served by overnight courier. Following that practice, I caused the sealed envelope containing the aforementioned document(s) to be delivered via overnight courier service to the addressee(s) specified below:

William J. Goines
 Karen Rosenthal
 Cindy Hamilton
GREENBERG TRAUIG, LLP
 1900 University Avenue, Fifth Floor
 East Palo Alto, CA 94303
 Tel.: (650) 328-8500
 Fax: (650) 328-8508

*Attorneys for David D. McDonald,
 Donna K. McDonald,
 National Expert Witness Network;
 and Technology CLE*

BY HAND DELIVERY: I am readily familiar with this firm's practice for causing documents to be served by hand delivery. Following that practice, I caused the sealed envelope containing the aforementioned document(s) to be hand delivered to the addressee(s) specified below.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Burlingame, California, on December 6, 2007.


 Linda A. Clark

1 GREENBERG TRAURIG, LLP
2 WILLIAM J. GOINES (SBN 61290)
3 KAREN ROSENTHAL (SBN 209419)
4 CINDY HAMILTON (SBN 217951)
5 1900 University Avenue, Fifth Floor
6 East Palo Alto, CA 94303
7 Telephone: (650) 328-8500
8 Facsimile: (650) 328-8508

9 Attorneys for Defendants and Cross-Complainants
10 DAVID MCDONALD, DONNA MCDONALD, NATIONAL
11 EXPERT WITNESS NETWORK, and TECHNOLOGY CLE

E-FILED

SAN MATEO COUNTY

Dec 12 2007

Clerk of the Superior Court

By U. FINAU
DEPUTY CLERK

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN MATEO

14 JENNIFER OSBELT,
15 an individual,

16 Plaintiff,

17 v.

18 DAVID MCDONALD, DONNA K.
19 MCDONALD; and
20 DOES 1-10, inclusive

21 Defendants.

Case No. CIV 463528

NOTICE OF MOTION AND
MOTION TO COMPEL
PLAINTIFF'S RESPONSES TO
DEFENDANTS' REQUEST FOR
PRODUCTION OF DOCUMENTS,
SET ONE; MEMORANDUM OF
POINTS AND AUTHORITIES AND
REQUEST FOR ATTORNEYS
FEES IN THE AMOUNT OF \$2077

Date: January 11, 2008
Time: 9:00 a.m.
Dept. LM

22 AND RELATED CROSS-ACTION

23 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

24 PLEASE TAKE NOTICE that on January 11, 2007, at the hour of 9:00 a.m., in the Law
25 & Motion Department of the above-referenced Court located at 400 County Center, Redwood
26 City, California, Defendants and Cross-Complainants DAVID MCDONALD, DONNA
27 MCDONALD, TECHNOLOGY CLE AND NATIONAL EXPERT WITNESS NETWORK
28 (collectively, "Defendants") will move to compel Plaintiff JENNIFER OSBELT ("Plaintiff") to

1 produce documents pursuant to the Request for Production of Documents served on Plaintiffs
2 on September 26, 2007.

3 This motion is made on the grounds that to date, Plaintiffs have served responses to
4 such Request for Production of Documents but failed to produce a single document.
5 Defendants have made efforts to meet and confer with Plaintiffs but as of the date of this filing,
6 no documents have been received. Defendants also seek attorneys fees in connection with the
7 preparation of this Motion.

8 This Motion will be based upon this notice and motion, the attached Memorandum of
9 Points and Authorities, the concurrently-filed Separate Statement of Items in Dispute and
10 Declaration of Cindy Hamilton and exhibits thereto, all of the papers filed and proceeding thus
11 far in this action, and such argument as the Court entertains at the hearing on this motion.

12
13 Dated: December 12, 2007

GREENBERG TRAURIG, LLP

14
15 By: Cindy Hamilton
16 William J. Goines, Esq.
17 Karen Rosenthal, Esq.
18 Cindy Hamilton, Esq.

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Attorneys for Defendants

MEMORANDUM OF POINTS AND AUTHORITIES**I. Introduction**

Defendants and Cross-Complainants David McDonald, Donna McDonald, National Expert Witness Network and Technology CLE (collectively, "Defendants") hereby bring this Motion to Compel Production of Documents propounded on Plaintiff and Cross-Defendant Jennifer Osbelt and Jennifer Osbelt dba Palo Alto Technical (collectively, "Plaintiff") on the grounds that Plaintiff failed to produce a single document in response to Defendants Request for Production of Documents despite serving responses indicating that Plaintiff would produce documents. Defendants also bring this motion to compel responses to documents pertaining to Plaintiff's fictitious business name Palo Alto Technical, a named Cross-Defendant in this action. Despite meet and confer efforts, Plaintiff has not produced any documents.

II. Statement of Facts

On September 26, 2007, Defendants served the Request for Production of Documents on the Plaintiff. See Exhibits A to Hamilton Declaration. Responses were due on October 30, 2007, pursuant to the provisions of the California Code of Civil Procedure Sections 2030.260(a) and 2031.260. However, Defendants voluntarily granted Plaintiff two extensions of time to respond to discovery, creating a new response date of November 13, 2007.

On November 13, 2007, Plaintiff served responses indicating that she would produce documents. As of the date of this filing, Defendant has not received a single document from Plaintiff. Furthermore, in her response Plaintiff refused to produce any documents pertaining to Palo Alto Technical, a fictitious business name under which Plaintiff does business and a named party in this action. Defendants Cross-Complaint alleges that Plaintiff used Palo Alto Technical as a vehicle to submit duplicative and fraudulent expense reimbursements to NEWN. Reimbursement checks written by NEWN were made payable to Palo Alto Technical at Plaintiff's request, and Palo Alto Technical documents are critical to Defendants in the prosecution of their Cross-Complaint.

On November 21, 2007, Defendants' counsel Cindy Hamilton sent a letter to Plaintiff's counsel Sean Ponist requesting that Plaintiff produce documents and attempting to meet and

1 confer regarding Plaintiff's refusal to produce documents pertaining to Palo Alto Technical, and
2 requesting a response by December 7, 2007. See Exhibit B to Hamilton Declaration. In a
3 subsequent phone conversation, Ms. Hamilton understood that Mr. Ponist had agreed to
4 produce Palo Alto Technical documents along with Plaintiffs document production, and sent a
5 confirmation letter to that effect dated November 28, 2007. See Exhibit C to Hamilton
6 Declaration. In a fax dated November 29, 2007, Mr. Ponist clarified a misunderstanding that
7 "although my office agreed to reconsider our position concerning the production of documents
8 pertaining to Palo Alto Technical, we have not agreed at this point to the production of Palo
9 Alto Technical documents". See Exhibit D to Hamilton Declaration. In an email dated
10 December 11, 2007, Mr. Ponist indicated that he was "serving amended responses" but did not
11 respond to subsequent emails requesting whether those "amended responses" included the
12 production of actual documents. See Exhibit E to Hamilton Declaration. Plaintiff has had
13 nearly three months to gather documents in this action, and Defendants have attempted to meet
14 and confer for over a month but as of the date of this filing have not received a single document
15 from Plaintiff.

16 **III. Argument**

17 Defendants request that the Court order Plaintiff to produce documents immediately,
18 including documents pertaining to Plaintiff's fictitious business name Palo Alto Technical.
19 Plaintiffs refusal to produce even a single document is a misuse of the discovery process
20 pursuant to section 2023.010(d) of the California Code of Civil Procedure, as Plaintiff is
21 "failing to submit to an authorized method of discovery".

22 Defendants' Cross-Complaint alleges that Plaintiff used Palo Alto Technical as a
23 vehicle to submit duplicative and fraudulent expense reimbursements which were paid by
24 NEWN. Plaintiff responded to these requests by stating "Palo Alto Technical is not a party to
25 this litigation nor do any allegations in the complaint or cross-complaint involve Palo Alto
26 Technical." See Plaintiff's response to Request for Production of Document in the Separate
27 Statement in Support of Defendants' Motion to Compel. This statement is blatantly inaccurate.
28 The Cross-Complaint names as a Cross-Defendant "Jennifer Osbelt, individually and doing

1 business as Palo Alto Technical", and the Cross-Complaint contains numerous references to
 2 Palo Alto Technical and how Plaintiff used this fictitious business name to defraud NEWN.

3 Defendants also request that the Court order Plaintiff to pay Defendants fees associated
 4 with having to file this motion to compel Plaintiff to comply with her discovery obligations. A
 5 party who forces a motion to compel discovery responses by misusing the discovery process
 6 shall be ordered to pay the successfully moving party's costs of making the motion, including
 7 attorneys' fees. *Id.* §§2030.290(c), 2031.310(d). As set forth in the attached Declaration of
 8 Cindy Hamilton, Defendants have incurred attorneys' fees in the amount of \$1147.00 in making
 9 this motion, and anticipate incurring additional fees in the amount of approximately \$930.00 in
 10 drafting a reply and arguing this motion at the hearing. Accordingly, Defendants request that
 11 the Court award attorneys fees in the amount of \$2077.00.

12 Defendants' counsel attempted to avoid the present motion practice by sending the meet
 13 and confer letters attached to Ms. Hamilton's declaration. Defendants second day of deposition
 14 is set for December 17 and 27th, respectively, and Plaintiff's deposition is set for January 3,
 15 2008. Since Plaintiffs still have not produced documents responsive to Defendant's Request for
 16 Production of Documents, this motion is Defendant's only recourse to Plaintiffs' flagrant
 17 misuse of the discovery process.

18 IV. Conclusion

19 Based on the foregoing, Defendants respectfully request that the Court grant this motion
 20 to compel responses to the Interrogatories and Demands and to order Plaintiffs to pay
 21 Defendant's attorneys fees in the amount of \$2077.00.

22 Dated: December 12, 2007

GREENBERG TRAURIG, LLP

24 By:



25 William J. Goines, Esq.
 26 Karen Rosenthal, Esq.
 27 Cindy Hamilton, Esq.
 28 Attorneys for Defendants and
 Cross-Complainants

Osbelt v. McDonald, et al.

Case No. CIV 463528

PROOF OF SERVICE

I, Cathy Sandifer, declare that I am a citizen of the United States, over the age of eighteen years and not a party to the within action. I am an employee of GREENBERG TRAURIG, LLP, and my business address is 1900 University Avenue, Fifth Floor, East Palo Alto, CA 94303. On December 12, 2007, I served the following documents:

NOTICE OF MOTION AND MOTION TO COMPEL PLAINTIFF'S RESPONSES TO DEFENDANTS' REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE; MEMORANDUM OF POINTS AND AUTHORITIES AND REQUEST FOR ATTORNEYS FEES IN THE AMOUNT OF \$2077

☐ by transmitting via **FACSIMILE** the document(s) listed above to the fax numbers) set forth below, or as stated on the attached service list, on this date at approximately _____, from the sending facsimile machine telephone number of 650-289-7893. The transmission was reported as complete and without error by the machine. Pursuant to California Rules of Court, Rule 2008(e)(4), I caused the machine to print a transmission record of the transmission, a copy of which is attached to the original of this declaration. The transmission report was properly issued by the transmitting facsimile machine.

☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the **UNITED STATES MAIL** at East Palo Alto, California, addressed as set forth below.

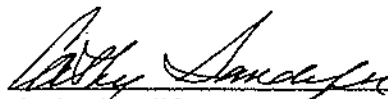
☒ by **OVERNIGHT MAIL** by placing the document(s) listed above in a sealed overnight mail envelope with postage thereon fully prepaid, addressed as set forth below.

☐ **(BY MESSENGER PERSONAL SERVICE)**. I caused delivery of such envelope by hand via courier service to the offices of the addressee.

Sean Ponist, Esq.
Cotchett, Pitre & McCarthy
840 Malcolm Rd., Ste. 200
Burlingame, CA 94010
Fax No. (650) 697-0577

I am readily familiar with the business practice of my place of employment in respect to the collection and processing of correspondence, pleadings and notices for mailing with United States Postal Service/Express Mail, Federal Express and other overnight mail services. The foregoing sealed envelope was placed for collection and mailing this date consistent with the ordinary business practice of my place of employment, so that it will be picked up this date with postage thereon fully prepaid at East Palo Alto, California, in the ordinary course of such business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 12, 2007, at East Palo Alto, California.


Cathy Sandifer

UPS CampusShip: View/Print Label

1. **Print the label(s):** Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
2. **Fold the printed label at the dotted line.** Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.
3. **GETTING YOUR SHIPMENT TO UPS**




Customers without a Daily Pickup

 - o Schedule a same day or future day Pickup to have a UPS driver pickup all your CampusShip packages.
 - o Hand the package to any UPS driver in your area.
 - o Take your package to any location of The UPS Store®, UPS Drop Box, UPS Customer Center, UPS Alliances (Office Depot® or Staples®) or Authorized Shipping Outlet near you. Items sent via UPS Return ServicesSM (including via Ground) are accepted at Drop Boxes.
 - o To find the location nearest you, please visit the Resources area of CampusShip and select UPS Locations.

Customers with a Daily Pickup

 - o Your driver will pickup your shipment(s) as usual.

FOLD HERE

<p>CATHY SANDIFER 6502897862 GREENBERG TRAURIG LLP 1900 UNIVERSITY AVENUE PALO ALTO CA 94303</p> <p>SHIP TO: SEAN PONIST, ESQ. COTCHETT, PITRE & MCCARTHY STE 200 840 MALCOLM RD. BURLINGAME CA 94010-1413</p>	<p>2 LBS</p> <p>1 OF 1</p>	<p>CA 944 9-31</p> 	<p>UPS NEXT DAY AIR</p> <p>TRACKING #: 1Z 004 9VR 01 9683 1563</p> <p>1</p> 	<p>BILLING: P/P</p> <p>Client Matter Number: 104732.010100 Employee ID Number: 3769</p> <p>CS 9.5.16.6 WP0760 69.0A 07/2007</p> <p> TM</p>
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1 GREENBERG TRAURIG, LLP
2 WILLIAM J. GOINES (SBN 61290)
3 KAREN ROSENTHAL (SBN 209419)
4 CINDY HAMILTON (SBN 217951)
5 1900 University Avenue, Fifth Floor
6 East Palo Alto, CA 94303
7 Telephone: (650) 328-8500
8 Facsimile: (650) 328-8508

9 Attorneys for Defendants and Cross-Complainants
10 DAVID MCDONALD, DONNA MCDONALD, NATIONAL
11 EXPERT WITNESS NETWORK, and TECHNOLOGY CLE

E-FILED
SAN MATEO COUNTY

Dec 12 2007

Clerk of the Superior Court
By U. FINAU
DEPUTY CLERK

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN MATEO

11 JENNIFER OSBELT,
12 an individual,

13 Plaintiff,

14 v.

15 DAVID MCDONALD, DONNA K.
16 MCDONALD; and
17 DOES 1-10, inclusive

18 Defendants.

Case No. CIV 463528

**DECLARATION OF CINDY
HAMILTON IN SUPPORT OF
DEFENDANTS MOTION TO
COMPEL PLAINTIFF'S
RESPONSES TO DEFENDANTS'
REQUEST FOR PRODUCTION OF
DOCUMENTS, SET ONE**

Date: January 11, 2008
Time: 9:00 a.m.
Dept. LM

19
20 AND RELATED CROSS-ACTION
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1 I, Cindy Hamilton, declare:

2 1. I am an attorney at law duly licensed to practice in the State of California and am an
3 associate in the law firm of Greenberg Traurig, LLP, counsel of record for Defendants and Cross-
4 Complainants Donna McDonald, David McDonald, National Expert Witness Network, and
5 Technology CLE ("Defendants"). I am familiar with the facts and circumstances of the above-
6 referenced action and the matters contained in this Declaration and would, if called upon as a witness,
7 competently testify thereto.

8 2. Defendants propounded Request for Production of Documents to Plaintiff Jennifer
9 Osbelt on September 26, 2007. A true and correct copy of such Request for Production of
10 Documents is attached as Exhibit A. Responses were due on October 30, 2006, however Defendants
11 voluntarily granted Plaintiff two extensions of time respond to discovery, creating a new response
12 date of November 13, 2007.

13 3. On November 13, 2007, Plaintiff served Responses to the Request for Production of
14 Documents. A true and correct copy of such response by Ms. Osbelt is attached as Exhibit B. In her
15 response Plaintiff refused to produce any documents pertaining to Palo Alto Technical.

16 4. On November 21, 2007, I sent a letter to Plaintiff's counsel Sean Ponist requesting
17 that Plaintiffs produce documents and attempting to meet and confer regarding Plaintiff's refusal to
18 produce documents pertaining to Palo Alto Technical as soon as possible but no later than December
19 7, 2006. A true and correct copy of this letter is attached as Exhibit C.

20 5. In a subsequent phone conversation, I understood that Mr. Ponist had agreed to
21 produce Palo Alto Technical documents along with Plaintiff's document production, and sent a
22 confirmation letter to that effect dated November 28, 2007. A true and correct copy of this letter is
23 attached as Exhibit D.

24 6. In a fax dated November 29, 2007, Mr. Ponist clarified a misunderstanding that
25 "although my office agreed to reconsider our position concerning the production of documents
26 pertaining to Palo Alto Technical, we have not agreed at this point to the production of Palo Alto
27 Technical Documents. A true and correct copy of this fax is attached as Exhibit E.
28

1 7. In an email dated December 11, 2007, Mr. Ponist indicated that he was "serving
2 amended responses" but did not respond to subsequent emails requesting whether those "amended
3 responses" included the production of actual documents. A true and correct copy of this email is
4 attached as Exhibit F.

5 8. As of today's date, at my hourly rate of \$310, the attorneys' fees incurred in bringing
6 this motion total \$1147.

7 9. I anticipate spending approximately three additional hours in drafting a reply and
8 arguing this motion at the hearing. Therefore, the additional anticipated attorneys' fees would total
9 \$2077.

10 I declare under penalty of perjury under the laws of the state of California that the foregoing is
11 true and correct. Executed at East Palo Alto, California, this 12th day of December, 2007.

12
13 Dated: December 12, 2006

GREENBERG TRAURIG, LLP

14 By: Cindy Hamilton
15 Cindy Hamilton, Esq.

16 Attorney for Defendants
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EXHIBIT A

WILLIAM J. GOINES (SBN 61290)
 KAREN ROSENTHAL (SBN 209419)
 CINDY HAMILTON (SBN 217951)
 GREENBERG TRAURIG, LLP
 1900 University Avenue, Fifth Floor
 East Palo Alto, California 94303
 Telephone: (650) 328-8500
 Facsimile: (650) 328-8508

Attorneys for Defendants and
 Cross-Complainants David McDonald,
 Donna McDonald, National Expert
 Witness Network, and Technology CLE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SAN MATEO

JENNIFER OSBELT,

Defendant(s);

v.

DAVID D. McDONALD, DONNA K.
 McDONALD, et al.,

Defendant(s).

Case No. CIV 463528

**REQUEST FOR PRODUCTION OF
 DOCUMENTS PROPOUNDED TO
 PLAINTIFF JENNIFER OSBELT (SET ONE)**

AND RELATED CROSS-ACTION

PROPOUNDING PARTY: DEFENDANTS AND CROSS-COMPLAINANTS DAVID D.
 McDONALD, DONNA K. McDONALD, NATIONAL
 EXPERT WITNESS NETWORK LLC and TECHNOLOGY
 CLE LLC

RESPONDING PARTY: PLAINTIFF JENNIFER OSBELT

SET NUMBER: ONE

TO: PLAINTIFF AND TO HER ATTORNEY OF RECORD:

Defendants and Cross-Complainants DAVID D. McDONALD, DONNA K. McDONALD,
 NATIONAL EXPERT WITNESS NETWORK LLC and TECHNOLOGY CLE LLC

1 (“Defendants”) hereby propound this Request for Production of Documents (the “Demands”) to
2 Plaintiff JENNIFER OSBELT (“Plaintiff”), as follows.

3 Pursuant to the provisions of the California Code of Civil Procedure section 2031.010,
4 Defendants request that Plaintiff serve a response to the Demands and produce the requested
5 documents for inspection and copying thirty (30) days from date of service of this Request, at the
6 office of Greenberg Traurig, LLP, 1900 University Avenue, Fifth Floor, East Palo Alto, California
7 94303.

8 DEFINITIONS AND INSTRUCTIONS

9 A. The term “YOU” and/or “YOUR” refers to Plaintiff JENNIFER OSBELT, her
10 attorneys and all other persons or entities currently and previously acting or purporting to act on her
11 behalf.

12 B. The term “PERSON” includes any natural person, including, but not limited to, any
13 custodian of records, firm, association, partnership, joint venture, corporation, related or associated
14 company, trust or other form of legal entity.

15 C. “DOCUMENT” means a writing and refers to handwriting, typewriting, printing,
16 photostating, email, photographing, magnetic impulse, mechanical or electronic recording and every
17 other means of recording upon any tangible thing, including letters, words, numbers, pictures,
18 sounds, or symbols, or combinations thereof, including, but not limited to, videotapes, magnetic,
19 read-only memory, or optical recordings, computer disks, and electronic mail messages.

20 Without limitation of the term “control,” a DOCUMENT is deemed to be in YOUR
21 control if you have the right to secure the DOCUMENT or a copy thereof from another person or
22 public or private entity having actual possession thereof. If a DOCUMENT is responsive to a request
23 for identification and is in YOUR control, but is not in YOUR possession or custody, identify the
24 person with possession or custody.

25 If copies of a DOCUMENT have been prepared and the copies are not identical or
26 contain additional information (or have undergone alteration by the addition or deletion of notations
27 or other modifications), each non-identical copy is a separate “DOCUMENT.” Similarly, a paper and
28 an electronic copy are each a separate “DOCUMENT.”

1 D. The term "STATEMENT" means any oral, written, stenographic or recorded
2 declaration of any type or description.

3 E. The terms "COMMUNICATION" and "COMMUNICATIONS" mean, unless
4 otherwise specified, any transfer of information, ideas, opinions or thoughts by any means at any
5 time or place under any circumstances and is not limited to transfers between persons but includes
6 other transfers, such as records and memoranda to file. The terms "COMMUNICATION" and
7 "COMMUNICATIONS" include the following:

8 (1) Any written letter, memorandum, electronic mail message or other
9 DOCUMENT which was sent by one or more individuals to another;

10 (2) Any telephone call between one or more individuals and another, whether or
11 not such call was by chance or prearranged, formal or informal;

12 (3) Any conversation or meeting between one or more individuals and another,
13 whether or not such contact was by chance or prearranged, formal or informal.

14 F. "ANY" or "EACH" shall include and encompass "all" and "every."

15 G. HE" (and its derivatives) shall include and encompass "SHE" and "IT" (and their
16 respective derivatives).

17 H. "OR" shall include and encompass "and" and "AND" shall be understood to include
18 "or."

19 I. The terms "RELATE" or "RELATING TO" include referring to, alluding to,
20 responding to, regarding, discussing, showing, describing, reflecting, analyzing, constituting,
21 including, mentioning, in respect of, or about.

22 J. Pursuant to California Code of Civil Procedure sections 2031.010 and 2031.050, the
23 request for production of documents embodied herein shall be deemed continuous such that any
24 document requested herein which is either discovered by you or comes within YOUR possession,
25 custody or control subsequent to YOUR initial production but prior to the final conclusion of this
26 case should be produced immediately upon its discovery or receipt.

27 //

28 //

PRODUCTION, PRIVILEGES AND OBJECTIONS

1. In producing the documents requested below, you are requested to furnish all documents in YOUR possession, custody or control or in the possession, custody or control of YOUR agents, representatives, attorneys, employees, assignees, trustees, officers, directors or any other person or entity acting or purporting act on YOUR behalf.

2. With respect to any documents which you decline to produce because of a claim of privilege, you are requested to provide a privilege log containing the following information as to each such document: (a) the date of each such document; (b) the name and official position of each author, preparer, sender, addressee and recipient of each such document; (c) the title of each such document; (d) an identification of the type of document; (e) a description of the subject matter of the document; (f) the nature of the privilege claimed; (g) a description of the grounds for the claimed privilege; (h) citations to the case law or other legal authority upon which you rely in making YOUR assertions of privilege; and (i) the paragraph number of each individual item in this Request to which each such document is responsive. This information must be provided in sufficient detail to enable Plaintiff to challenge the claim of privilege.

3. If you object to all or part of any of the Requests for Production contained herein on the grounds of vagueness, ambiguity, overbreadth or any similar grounds, then as to each such objection: (a) identify the specific portion(s) of the request which you claim you cannot answer because of the alleged defect in the request; (b) identify the specific word(s) and/or phrase(s) to which YOUR objection relates; (c) state why the alleged ambiguity, vagueness or overbreadth, for example, prevents you from answering all or part of the discovery request; (d) identify all of the specific portion(s) of the discovery request to which you are not responding at all based upon this objection.

DOCUMENT REQUESTS**REQUEST FOR PRODUCTION NO. 1:**

Palo Alto Technical Expense reimbursements from January 2006 through April 2007.

REQUEST FOR PRODUCTION NO. 2:

All DOCUMENTS RELATING to any TCLE patents or patent applications.

1 REQUEST FOR PRODUCTION NO. 3:

2 ALL DOCUMENTS RELATING to the U.S. Bank note.

3 REQUEST FOR PRODUCTION NO. 4:

4 ALL DOCUMENTS RELATING to NEWN's 401 K pension plan.

5 REQUEST FOR PRODUCTION NO. 5:

6 ALL DOCUMENTS RELATING TO NEWN's profit sharing plan.

7 REQUEST FOR PRODUCTION NO. 6:

8 ALL COMMUNICATIONS with Bidwell Consulting.

9 REQUEST FOR PRODUCTION NO. 7:

10 ALL COMMUNICATIONS with Edward Jones.

11 REQUEST FOR PRODUCTION NO. 8:

12 ALL COMMUNICATIONS RELATING to allegations of fraud against the McDonalds or
13 NEWN.

14 REQUEST FOR PRODUCTION NO. 9:

15 ALL COMMUNICATIONS RELATING to allegations of embezzlement against the
16 McDonalds or NEWN.

17 REQUEST FOR PRODUCTION NO. 10:

18 ALL DOCUMENTS RELATING to the books and records of Palo Alto Technical.

19 REQUEST FOR PRODUCTION NO. 11:

20 ALL DOCUMENTS RELATING to any bank statements or account summaries of Palo Alto
21 Technical.

22 REQUEST FOR PRODUCTION NO. 12:

23 ALL DOCUMENTS RELATING to tax returns RELATING to Palo Alto Technical.

24 REQUEST FOR PRODUCTION NO. 13:

25 ALL DOCUMENTS RELATING to any statement made by YOU in the last twelve months
26 concerning the McDonalds.

27 REQUEST FOR PRODUCTION NO. 14:

28 ALL DOCUMENTS YOU received from Cross-Complainants or their accountants

1 RELATING TO the financial condition of NEWN.

2 REQUEST FOR PRODUCTION NO. 15:

3 ALL DOCUMENTS RELATING to requests from YOU for financial information of NEWN.

4 REQUEST FOR PRODUCTION NO. 16:

5 ALL DOCUMENTS REGARDING YOUR alleged acceptance of DAVID MCDONALD's
6 offer to purchase YOUR membership interest in NEWN.

7 REQUEST FOR PRODUCTION NO. 17:

8 ALL DOCUMENTS RELATING TO any tax deferred deductions or investment credits
9 YOU claimed on YOUR 2004, 2005, and 2006 tax returns filed while a member of NEWN.

10 REQUEST FOR PRODUCTION NO. 18:

11 ALL DOCUMENTS relating to YOUR trip to Mexico in January 2006.

12
13
14 Dated: September 18, 2007.

GREENBERG TRAURIG, LLP

15
16 By: Cindy Hamilton

17 William J. Goines
18 Karen Rosenthal
19 Cindy Hamilton

20 Attorneys for Defendants and Cross-Complainants
21 David McDonald, Donna McDonald, National
22 Expert Witness Network. and Technology CLE
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Osbelt v. McDonald, et al.

Case No. CIV 463528

PROOF OF SERVICE

I, Karen Nelson, declare that I am a citizen of the United States, over the age of eighteen years and not a party to the within action. I am an employee of GREENBERG TRAURIG, LLP, and my business address is 1900 University Avenue, Fifth Floor, East Palo Alto, CA 94303. On September 25, 2007, I served the following documents:

**REQUEST FOR PRODUCTION OF DOCUMENTS PROPOUNDED TO PLAINTIFF
JENNIFER OSBELT (SET ONE)**

☒ by transmitting via **FACSIMILE** the document(s) listed above to the fax numbers) set forth below, or as stated on the attached service list, on this date at approximately _____, from the sending facsimile machine telephone number of 650-289-7893. The transmission was reported as complete and without error by the machine. Pursuant to California Rules of Court, Rule 2008(e)(4), I caused the machine to print a transmission record of the transmission, a copy of which is attached to the original of this declaration. The transmission report was properly issued by the transmitting facsimile machine.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the **UNITED STATES MAIL** at East Palo Alto, California, addressed as set forth below.

☐ by **OVERNIGHT MAIL** by placing the document(s) listed above in a sealed overnight mail envelope with postage thereon fully prepaid, addressed as set forth below.

☐ **(BY MESSENGER PERSONAL SERVICE)**. I caused delivery of such envelope by hand via courier service to the offices of the addressee.

Ara Jabaghourian, Esq.
Cotchett, Pitre & McCarthy
840 Malcolm Rd., Ste. 200
Burlingame, CA 94010
Fax No. (650) 697-0577

I am readily familiar with the business practice of my place of employment in respect to the collection and processing of correspondence, pleadings and notices for mailing with United States Postal Service/Express Mail, Federal Express and other overnight mail services. The foregoing sealed envelope was placed for collection and mailing this date consistent with the ordinary business practice of my place of employment, so that it will be picked up this date with postage thereon fully prepaid at East Palo Alto, California, in the ordinary course of such business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 25, 2007, at East Palo Alto, California.



Karen Nelson

1
Proof of Service

EXHIBIT B

1 JOSEPH W. COTCHETT (SB#36324)
jcotchett@cpmlegal.com
2 ARA JABAGCHOURIAN (SB#205777)
ajabagchourian@cpmlegal.com
3 SEAN E. PONIST (SB#204712)
sponist@cpmlegal.com
4 **COTCHETT, PITRE & McCARTHY**
San Francisco Airport Office Center
5 840 Malcolm Road, Suite 200
Burlingame, CA 94010
6 Telephone: (650) 697-6000
Facsimile: (650) 697-0577

7 *Attorneys for Plaintiff*
8
9
10

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF SAN MATEO**
13

14 JENNIFER OSBELT,

15 Plaintiff,

16 v.

17 DAVID D. McDONALD, DONNA K.
18 McDONALD, and DOES 1 THROUGH 10,
inclusive,

19 Defendants.
20

CASE NO. CIV 463528

PLAINTIFF'S RESPONSE TO
DEFENDANTS REQUEST FOR
PRODUCTION OF DOCUMENTS,
SET ONE

21 **PROPOUNDING PARTY:**

22 **DEFENDANTS AND CROSS-COMPLAINANTS**
23 **DAVID MCDONALD, DONNA MCDONALD,**
NATIONAL EXPERT WITNESS NETWORK AND
TECHNOLOGY CLE

24 **RESPONDING PARTY:**

PLAINTIFF JENNIFER OSBELT

25 **SET NO.:**

ONE (1)
26
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Pursuant to California Code of Civil Procedure Section 2031.210 *et seq.*, Plaintiff JENNIFER OSBELT hereby responds to the Request for Production of Documents, Set One, dated September 25, 2007, propounded by Defendants and Cross-Complainants DAVID MCDONALD, DONNA MCDONALD, NATIONAL EXPERT WITNESS NETWORK AND TECHNOLOGY CLE as follows:

PRELIMINARY STATEMENT

These responses represent diligent and best efforts to respond to written discovery based upon the investigation which these responding parties have thus far been able to carry out in regard to the facts relevant to this litigation. There may exist further information, documents or discovery that is not within these responding parties' present knowledge or reasonably available to these responding parties.

There may exist documents relating to the subject matter of discovery which these responding parties have not yet located, identified or reviewed despite its best efforts to do so. Accordingly, these responses are based upon facts and information which are now known to these responding parties and do not constitute an admission or representation that additional facts or documents relevant to the subject matter of discovery do not exist.

As this litigation proceeds, the responding party anticipates that other facts and documents may be discovered and identified by her. Without in any way obligating herself to do so, the responding party reserves the right to later supplement, amend or otherwise modify these responses in any way at any time.

Plaintiff objects to the Defendants' "Definitions and Instructions" to the extent that they seek to impose any additional duties in responding to these requests beyond that required by the code of Civil Procedure and any Order of the Court.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

Palo Alto Technical Expense reimbursements from January 2006 through April 2007.

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RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010, 2017.020. Palo Alto Technical is not a party to this litigation nor do any allegations in the complaint or cross-complaint involve Palo Alto Technical.

Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome, oppressive, and/or duplicative.

Plaintiff objects to this request to the extent it requests the disclosure of third party financial records (Rev. & Tax Code § 19542).

Plaintiff objects to this request to the extent that it encompasses documents protected by the attorney/client communication's privilege and/or attorney work product protection. Evid. Code, § 954; Code Civ. Proc., §2018.20; See also, *Nacht & Lewis Architects, Inc. v. Superior Court* (1996) 47 Cal.App.4th 214.

Subject to the foregoing objections, no documents will be produced responsive to this request.

REQUEST FOR PRODUCTION NO. 2:

All DOCUMENTS RELATING to any TCLE patents or patent applications.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010, 2017.020.

Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome, oppressive, and/or duplicative.

Plaintiff objects to this request to the extent that it encompasses documents protected by the attorney/client communication's privilege and/or attorney work product protection. Evid.

Code, § 954; Code Civ. Proc., §2018.20; See also, *Nacht & Lewis Architects, Inc. v. Superior Court* (1996) 47 Cal.App.4th 214.

Subject to the foregoing objections, Plaintiff will produce all non-privileged responsive documents in her possession, custody and control which can be located through reasonably diligent search.

REQUEST FOR PRODUCTION NO. 3:

ALL DOCUMENTS RELATING to the U.S. Bank note.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010, 2017.020.

Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome, oppressive, and/or duplicative.

Plaintiff objects to this request to the extent that it encompasses documents protected by the attorney/client communication's privilege and/or attorney work product protection. Evid. Code, § 954; Code Civ. Proc., §2018.20; See also, *Nacht & Lewis Architects, Inc. v. Superior Court* (1996) 47 Cal.App.4th 214.

Subject to the foregoing objections, Plaintiff responds as follows: Plaintiff has conducted a diligent search and a reasonable inquiry and is unable to produce any of the requested documents in this category because the requested documents are not in the possession, custody or control of this answering party.

REQUEST FOR PRODUCTION NO. 4:

ALL DOCUMENTS RELATING to NEWN's 401K pension plan.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or seeks information that is not relevant or reasonably calculated to lead to the discovery of

1 admissible evidence, and/or seeks information equally available to the asking party. Code Civ.
2 Proc., §§ 2017.010, 2017.020.

3 Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome,
4 oppressive, and/or duplicative.

5 Plaintiff objects to this request to the extent that it encompasses documents protected by
6 the attorney/client communication's privilege and/or attorney work product protection. Evid.
7 Code, § 954; Code Civ. Proc., §2018.20; See also, *Nacht & Lewis Architects, Inc. v. Superior*
8 *Court* (1996) 47 Cal.App.4th 214.

9 Subject to the foregoing objections, Plaintiff responds as follows: Plaintiff has conducted
10 a diligent search and a reasonable inquiry and is unable to produce any of the requested
11 documents in this category because the requested documents are not in the possession, custody or
12 control of this answering party.

13 **REQUEST FOR PRODUCTION NO. 5:**

14 ALL DOCUMENTS RELATING TO NEWN's profit sharing plan.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

16 Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous,
17 and/or seeks information that is not relevant or reasonably calculated to lead to the discovery of
18 admissible evidence, and/or seeks information equally available to the asking party. Code Civ.
19 Proc., §§ 2017.010, 2017.020.

20 Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome,
21 oppressive, and/or duplicative.

22 Plaintiff objects to this request to the extent that it encompasses documents protected by
23 the attorney/client communication's privilege and/or attorney work product protection. Evid.
24 Code, § 954; Code Civ. Proc., §2018.20; See also, *Nacht & Lewis Architects, Inc. v. Superior*
25 *Court* (1996) 47 Cal.App.4th 214.

26 Subject to the foregoing objections, Plaintiff responds as follows: Plaintiff has conducted
27 a diligent search and a reasonable inquiry and is unable to produce any of the requested
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documents in this category because the requested documents are not in the possession, custody or control of this answering party.

REQUEST FOR PRODUCTION NO. 6:

ALL COMMUNICATIONS with Bidwell Consulting.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010, 2017.020. As defined, it is not possible for Plaintiff to produce "All COMMUNICATIONS," and she has no obligation to reduce conversations, meetings, etc. to writing.

Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome, oppressive, and/or duplicative.

Plaintiff objects to this request to the extent that it encompasses documents protected by the attorney/client communication's privilege and/or attorney work product protection. Evid. Code, § 954; Code Civ. Proc., §2018.20; See also, *Nacht & Lewis Architects, Inc. v. Superior Court* (1996) 47 Cal.App.4th 214.

Subject to the foregoing objections, Plaintiff will produce all non-privileged responsive documents in her possession, custody and control which can be located through reasonably diligent search.

REQUEST FOR PRODUCTION NO. 7:

ALL COMMUNICATIONS with Edward Jones.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010, 2017.020. As defined, it is not possible for Plaintiff to produce "All

1 COMMUNICATIONS,” and she has no obligation to reduce conversations, meetings, etc. to
2 writing.

3 Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome,
4 oppressive, and/or duplicative.

5 Plaintiff objects to this request to the extent that it encompasses documents protected by
6 the attorney/client communication’s privilege and/or attorney work product protection. Evid.
7 Code, § 954; Code Civ. Proc., §2018.20; See also, *Nacht & Lewis Architects, Inc. v. Superior*
8 *Court* (1996) 47 Cal.App.4th 214.

9 Subject to the foregoing objections, Plaintiff will produce all non-privileged responsive
10 documents in her possession, custody and control which can be located through reasonably
11 diligent search.

12 **REQUEST FOR PRODUCTION NO. 8:**

13 ALL COMMUNICATIONS RELATING to allegations of fraud against the McDonalds
14 or NEWN.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

16 Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous,
17 and/or seeks information that is not relevant or reasonably calculated to lead to the discovery of
18 admissible evidence, and/or seeks information equally available to the asking party. Code Civ.
19 Proc., §§ 2017.010, 2017.020. As defined, it is not possible for Plaintiff to produce “All
20 COMMUNICATIONS,” and she has no obligation to reduce conversations, meetings, etc. to
21 writing.

22 Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome,
23 oppressive, and/or duplicative.

24 Plaintiff objects to this request to the extent that it encompasses documents protected by
25 the attorney/client communication’s privilege and/or attorney work product protection. Evid.
26 Code, § 954; Code Civ. Proc., §2018.20; See also, *Nacht & Lewis Architects, Inc. v. Superior*
27 *Court* (1996) 47 Cal.App.4th 214.

1 Subject to the foregoing objections, Plaintiff will produce all non-privileged responsive
2 documents in her possession, custody and control which can be located through reasonably
3 diligent search.

4 **REQUEST FOR PRODUCTION NO. 9:**

5 ALL COMMUNICATIONS RELATING to allegations of embezzlement against the
6 McDonalds or NEWN.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

8 Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous,
9 and/or seeks information that is not relevant or reasonably calculated to lead to the discovery of
10 admissible evidence, and/or seeks information equally available to the asking party. Code Civ.
11 Proc., §§ 2017.010, 2017.020. As defined, it is not possible for Plaintiff to produce "All
12 COMMUNICATIONS," and she has no obligation to reduce conversations, meetings, etc. to
13 writing.

14 Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome,
15 oppressive, and/or duplicative.

16 Plaintiff objects to this request to the extent that it encompasses documents protected by
17 the attorney/client communication's privilege and/or attorney work product protection. Evid.
18 Code, § 954; Code Civ. Proc., §2018.20; See also, *Nacht & Lewis Architects, Inc. v. Superior*
19 *Court* (1996) 47 Cal.App.4th 214.

20 Subject to the foregoing objections, Plaintiff responds as follows: Plaintiff has conducted
21 a diligent search and a reasonable inquiry and is unable to produce any of the requested
22 documents in this category because the requested documents are not in the possession, custody or
23 control of this answering party.

24 **REQUEST FOR PRODUCTION NO. 10:**

25 ALL DOCUMENTS RELATING to the books and records of Palo Alto Technical.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

27 Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous,
28 and/or seeks information that is not relevant or reasonably calculated to lead to the discovery of

admissible evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010, 2017.020. Palo Alto Technical is not a party to this litigation nor do any allegations in the complaint or cross-complaint involve Palo Alto Technical.

Plaintiff objects to this request to the extent that it encompasses documents protected by the attorney/client communication's privilege and/or attorney work product protection. Evid. Code, § 954; Code Civ. Proc., §2018.20; See also, *Nacht & Lewis Architects, Inc. v. Superior Court* (1996) 47 Cal.App.4th 214.

Plaintiff further objects to this request to the extent that it calls for productions of trade secrets section (Evid. Code § 1060), violates the tax payer privilege (Rev. & Tax Code § 19542), and requires the disclosure of third party financial records (Cal. Const. Art. 1, §1).

Subject to the foregoing objections, no documents will be produced responsive to this request.

REQUEST FOR PRODUCTION NO. 11:

ALL DOCUMENTS RELATING to any bank statements or account summaries of Palo Alto Technical.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010, 2017.020. Palo Alto Technical is not a party to this litigation nor do any allegations in the complaint or cross-complaint involve Palo Alto Technical.

Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome, oppressive, and/or duplicative.

Plaintiff objects to this request to the extent it requests the disclosure of third party financial records (Rev. & Tax Code § 19542).

Plaintiff objects to this request to the extent that it encompasses documents protected by the attorney/client communication's privilege and/or attorney work product protection. Evid.

Code, § 954; Code Civ. Proc., §2018.20; See also, *Nacht & Lewis Architects, Inc. v. Superior Court* (1996) 47 Cal.App.4th 214.

Subject to the foregoing objections, no documents will be produced responsive to this request.

REQUEST FOR PRODUCTION NO. 12:

ALL DOCUMENTS RELATING to tax returns RELATING to Palo Alto Technical.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010, 2017.020. Palo Alto Technical is not a party to this litigation nor do any allegations in the complaint or cross-complaint involve Palo Alto Technical.

Plaintiff objects to this request to the extent that it encompasses documents protected by the attorney/client communication's privilege and/or attorney work product protection. Evid. Code, § 954; Code Civ. Proc., §2018.20; See also, *Nacht & Lewis Architects, Inc. v. Superior Court* (1996) 47 Cal.App.4th 214.

Plaintiff further objects to this request to the extent that it calls for productions of trade secrets section (Evid. Code § 1060), violates the tax payer privilege (Rev. & Tax Code § 19542), and requires the disclosure of third party financial records (Cal. Const. Art. 1, §1).

Subject to the foregoing objections, no documents will be produced responsive to this request.

REQUEST FOR PRODUCTION NO. 13:

ALL DOCUMENTS RELATING to any statement made by YOU in the last twelve months concerning the McDonalds.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or seeks information that is not relevant or reasonably calculated to lead to the discovery of

1 admissible evidence, and/or seeks information equally available to the asking party. Code Civ.
2 Proc., §§ 2017.010, 2017.020.

3 Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome,
4 oppressive, and/or duplicative.

5 Plaintiff objects to this request to the extent that it encompasses documents protected by
6 the attorney/client communication's privilege and/or attorney work product protection. Evid.
7 Code, § 954; Code Civ. Proc., §2018.20; See also, *Nacht & Lewis Architects, Inc. v. Superior*
8 *Court* (1996) 47 Cal.App.4th 214.

9 Subject to the foregoing objections, Plaintiff will produce all non-privileged responsive
10 documents in her possession, custody and control which can be located through reasonably
11 diligent search.

12 **REQUEST FOR PRODUCTION NO. 14:**

13 ALL DOCUMENTS YOU received from Cross-Complainants or their accountants
14 RELATING TO the financial condition of NEWN.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

16 Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous,
17 and/or seeks information that is not relevant or reasonably calculated to lead to the discovery of
18 admissible evidence, and/or seeks information equally available to the asking party. Code Civ.
19 Proc., §§ 2017.010, 2017.020.

20 Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome,
21 oppressive, and/or duplicative.

22 Subject to the foregoing objections, Plaintiff will produce all non-privileged responsive
23 documents in her possession, custody and control which can be located through reasonably
24 diligent search.

25 **REQUEST FOR PRODUCTION NO. 15:**

26 ALL DOCUMENTS RELATING to requests from YOU for financial information of
27 NEWN.

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RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010, 2017.020.

Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome, oppressive, and/or duplicative.

Plaintiff objects to this request to the extent that it encompasses documents protected by the attorney/client communication's privilege and/or attorney work product protection. Evid. Code, § 954; Code Civ. Proc., §2018.20; See also, *Nacht & Lewis Architects, Inc. v. Superior Court* (1996) 47 Cal.App.4th 214.

Subject to the foregoing objections, Plaintiff will produce all non-privileged responsive documents in her possession, custody and control which can be located through reasonably diligent search.

REQUEST FOR PRODUCTION NO. 16:

ALL DOCUMENTS REGARDING YOUR alleged acceptance of DAVID MCDONALD's offer to purchase YOUR membership interest in NEWN.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010, 2017.020.

Plaintiff objects to this request to the extent that it is argumentative, mischaracterizes the evidence, assumes facts, and/or lacks foundation.

Plaintiff objects to this request to the extent that it encompasses documents protected by the attorney/client communication's privilege and/or attorney work product protection. Evid. Code, § 954; Code Civ. Proc., §2018.20; See also, *Nacht & Lewis Architects, Inc. v. Superior Court* (1996) 47 Cal.App.4th 214.

1 Subject to the foregoing objections, Plaintiff will produce all non-privileged responsive
2 documents in her possession, custody and control which can be located through reasonably
3 diligent search.

4 **REQUEST FOR PRODUCTION NO. 17:**

5 ALL DOCUMENTS RELATING TO any tax deferred deductions or investment credits
6 YOU claimed on YOUR 2004, 2005, and 2006 tax returns filed while a member of NEWN.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

8 Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous,
9 and/or seeks information that is not relevant or reasonably calculated to lead to the discovery of
10 admissible evidence, and/or seeks information equally available to the asking party. Code Civ.
11 Proc., §§ 2017.010, 2017.020. Plaintiff objects to this request on the basis that it is cumulative,
12 unduly burdensome, oppressive, and/or duplicative.

13 Plaintiff objects to this request on the basis that it seeks information protected by Jennifer
14 Osbelt's right to privacy by seeking personal financial information. (Cal. Const. Art. I, § 1). This
15 request also seeks information protected by the tax payer privilege (Rev. & Tax Code § 19542).

16 Plaintiff objects to this request to the extent that it encompasses documents protected by
17 the attorney/client communication's privilege and/or attorney work product protection. Evid.
18 Code, § 954; Code Civ. Proc., §2018.20; See also, *Nacht & Lewis Architects, Inc. v. Superior*
19 *Court* (1996) 47 Cal.App.4th 214.

20 Subject to the foregoing objections, no documents will be produced responsive to this
21 request.

22 **REQUEST FOR PRODUCTION NO. 18:**

23 ALL DOCUMENTS relating to YOUR trip to Mexico in January 2006.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

25 Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous,
26 and/or seeks information that is not relevant or reasonably calculated to lead to the discovery of
27 admissible evidence, and/or seeks information equally available to the asking party. Code Civ.
28 Proc., §§ 2017.010, 2017.020.

1 Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome,
2 oppressive, and/or duplicative.

3 Plaintiff objects to this request on the grounds that it seeks information protected by her
4 right of privacy (Cal. Const. Art. I, § 1).

5 Plaintiff objects to this request to the extent that it encompasses documents protected by
6 the attorney/client communication's privilege and/or attorney work product protection. Evid.
7 Code, § 954; Code Civ. Proc., §2018.20; See also, *Nacht & Lewis Architects, Inc. v. Superior*
8 *Court* (1996) 47 Cal.App.4th 214.

9 Subject to the foregoing objections, no documents will be produced responsive to this
10 request.

11 Dated: November 13, 2007

COTCHETT, PITRE & McCARTHY

12
13
14 By: 

15 SEAN E. PONIST
16 Attorneys for Plaintiff
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VERIFICATIONS TO FOLLOW

Jennifer Osbelt, v. David D. McDonald, Donna K. McDonald, et al.
San Mateo Superior Court CIV 463528

PROOF OF SERVICE

I am employed in San Mateo County, which is where service of the document(s) referred to below occurred. I am over the age of 18 and not a party to the within action. My business address is Cotchett, Pitre & McCarthy, San Francisco Airport Center, 840 Malcolm Road, Suite 200, Burlingame, California 94010. I am readily familiar with Cotchett, Pitre & McCarthy's practices for the service of documents. On this date, I served a true copy of the following document(s) in the manner listed below:

**PLAINTIFF'S VERIFIED RESPONSE TO DEFENDANTS REQUEST FOR
 PRODUCTION OF DOCUMENTS, SET ONE**

BY MAIL: I am readily familiar with this firm's practice for collection and processing of correspondence for mailing. Following that practice, I placed a true copy of the aforementioned document(s) in a sealed envelope, addressed to each addressee, respectively, as specified below. The envelope was placed in the mail at my business address, with postage thereon fully prepaid, for deposit with the United States Postal Service on that same day in the ordinary course of business.

BY HAND DELIVERY: I am readily familiar with this firm's practice for causing documents to be served by hand delivery. Following that practice, I caused the sealed envelope containing the aforementioned document(s) to be hand delivered to the addressee(s) specified below.

XXX BY OVERNIGHT COURIER SERVICE: I am readily familiar with this firm's practice for causing documents to be served by overnight courier. Following that practice, I caused the sealed envelope containing the aforementioned document(s) to be delivered via overnight courier service to the addressee(s) specified below:

William J. Goines
 Karen Rosenthal
 Cindy Hamilton
GREENBERG TRAURIG, LLP
 1900 University Avenue, Fifth Floor
 East Palo Alto, CA 94303
 Tel.: (650) 328-8500
 Fax: (650) 328-8508

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Burlingame, California, on November 13, 2007.


 RYAN O. MANUEL

VERIFICATION

I, JENNIFER OSBELT, state:

I have read the foregoing **JENNIFER OSBELT'S VERIFIED RESPONSE TO DEFENDANT'S REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE**, and know the contents thereof.

I certify that the same is true to the best of my own knowledge except as to those matters which are therein stated upon my information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 14 day of November 2007, at Burlingame, California.


Jennifer Osbelt

EXHIBIT C

Greenberg Taurig

Cindy Hamilton
Tel. 650.289.7859
Fax 650.462.7859
hamiltonc@gtlaw.com

November 21, 2007

Sean Ponist, Esq.
Cotchett, Pitre & McCarthy
840 Malcolm Rd., Ste. 200
Burlingame, CA 94010

Re: Osbelt v. McDonald, et al.

Dear Sean:

We are in receipt of Cross-Defendant Jennifer Osbelt's ("Osbelt's") unverified discovery responses dated November 13, 2007. This letter is an attempt to meet and confer on Osbelt's refusal to produce documents concerning Palo Alto Technical, a company of unknown origin under which Osbelt does business and a named party to this action. Specifically, Osbelt has refused to respond to Defendants Request for Production of Documents Nos. 1, 10, 11, and 12.

In response to these discovery requests Osbelt interposes boilerplate objections and states: "Palo Alto Technical is not a party to this litigation nor do any allegations in the complaint or cross-complaint involve Palo Alto Technical." This response is both disingenuous and inaccurate. As you are aware, the Cross-Complaint contains allegations that Osbelt used Palo Alto Technical as a vehicle to submit and receive fraudulent and duplicative expense reimbursements from NEWN. Jennifer Osbelt and her dba Palo Alto Technical are both named parties to this action, and the following excerpts from the Cross-Complaint are referenced numerous times:

Cross-Complaint, ¶ 8: "Cross-Defendant Palo Alto Technical is a fictitious business name registered by Ms. Osbelt in San Mateo County. Cross-Complainants are informed and believe that Ms. Osbelt conducts business under the fictitious business name Palo Alto Technical."

Cross Complaint ¶ 13: "Ms. Osbelt instructed that check to reimburse her for these expenses be made out in the name of Palo Alto Technical. Expense reports submitted by Ms. Osbelt were submitted both in her name and in the name of Palo Alto Technical."

Cross-Complaint ¶ 14: "Ms. Osbelt also submitted to NEWN for reimbursement certain expenses which were not related to NEWN business but benefitted Ms. Osbelt's company Palo Alto Technical, and Ms. Osbelt personally".

ALBANY
AMSTERDAM
ATLANTA
BOCA RATON
BOSTON
CHICAGO
DALLAS
DENVER
FORT LAUDERDALE
LOS ANGELES
MIAMI
NEW JERSEY
NEW YORK
ORANGE COUNTY, CA
ORLANDO
PHILADELPHIA
PHOENIX
SILICON VALLEY
TALLAHASSEE
TYSONS CORNER
WASHINGTON, D.C.
WEST PALM BEACH
WILMINGTON
ZURICH

Sean Ponist, Esq.
November 21, 2007
Page 2

If Osbelt objected to the inclusion of Palo Alto Technical in this case, the appropriate remedy would have been to file a demurrer or motion to strike the allegations in the Cross-Complaint as they pertain to Palo Alto Technical. As it stands the Cross-Complaint contains specific allegations of wrongdoing, including fraud, against Osbelt conducted through Palo Alto Technical and so Osbelt's direct privity subjects them both to discovery, as there is no legally recognized separation between the two entities. "The designation [dba] means 'doing business as' but is merely descriptive of the person or corporation who does business under some other name. Doing business under another name does not create an entity distinct from the person operating the business." [Citation.] The business name is a fiction, and so too is any implication that the business is a legal entity separate from its owner." Providence Washington Ins. Co. v. Valley Forge Ins. Co. (1996) 42 Cal.App.4th 1194, 1200, emphasis added.

Similarly, when Cross-Defendants prevail in this action it will be against Ms. Osbelt individually and doing business as Palo Alto Technical, and so both are subject to discovery. Although an action may properly be brought against the fictitious name, once the entity or individual behind the fictitious name appears in the action, any judgment is binding upon that entity or individual. Pinkerton's, Inc. v. Superior Court (1996) 49 Cal.App.4th 1342, 1348. A person doing business as a fictitious name remains personally liable for the debts of the fictitiously named entity, specifically named in the Cross-Complaint. *Id* at 1348.

Please advise of when we may expect your document production on this matter, or in the event you are not inclined to produce responsive documents, of dates when you are available for a hearing on our motion to compel. As we must file a Motion to Compel by December 28, 2007, kindly respond by December 7, 2007.

Very truly yours,



Cindy Hamilton

MESSAGE CONFIRMATION

11/26/2007 09:58
ID=GREENBERG TRAURG LLP

DATE	S.R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT	S.C.
11/26	00:50"	650 697 0577	TX	003	OK	0000

11/26/2007 09:56 GREENBERG TRAURG LLP → 4732#010100#16506970577# NO.315 0001

Greenberg Traurig

Transmittal Cover Sheet

From: Cindy Hamilton Tel: 650.289-7859 E-Mail: hamiltonc@gtlaw.com

To:	Fax No:	Company:	Phone No.:
Sean Ponist, Esq.	(650) 697-0577	Cotchett, Pitre & McCarthy	

File No.: 104732-010100

Re: Osbelt v. McDonald, et al.

Date: November 21, 2007

No. Pages: Including Cover Sheet 3

If you do not receive all pages properly, please call the Sender.

Notes: Please see the attached correspondence. Thank you.

Also sent via: ☒ US Mail ☐ Overnight ☐ Messenger ☐ Email ☐ No Other

The information contained in this transmission is attorney privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone collect and return the original message to us at the address below via the U.S. Postal Service. We will reimburse you for your postage. Thank you.

1900 University Avenue, 5th Floor, East Palo Alto, California 94303 Phone: 650.328.8500 Fax: 650.328.8508
SV 346218816v1

EXHIBIT D

Greenberg Traurig

Cindy Hamilton
Tel. 650.289.7859
Fax 650.482.7859
hamiltonc@gtlaw.com

November 28, 2007

VIA FACSIMILE

Sean Ponist, Esq.
Cotchett, Pitre & McCarthy
840 Malcolm Rd., Ste. 200
Burlingame, CA 94010

Re: Osbelt v. McDonald, et al.


Dear Sean:

This letter will confirm that you have granted our client, David McDonald, up to and including December 12, 2007, within which to respond to your client's most recent set of discovery requests (Form Interrogatories, Set One; Special Interrogatories, Set Two; Request for Admissions, Set Two; and Request for Production of Documents, Set Two).

This letter will further confirm our conversation yesterday that your office intends to produce documents pertaining to Palo Alto Technical that were the subject of our meet and confer letter dated November 9, 2007.

Thank you.

Very truly yours,



Cindy Hamilton

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DENVER
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MESSAGE CONFIRMATION

11/28/2007 13:52
ID=GREENBERG TRAURG LLP

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11/28/2007 13:51 GREENBERG TRAURG LLP → 4732#010100#16506970577# NO.320 D001

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Transmittal Cover Sheet

From: Cindy Hamilton Tel: 650.289-7859 E-Mail: hamiltonc@gtlaw.com

To:	Fax No:	Company:	Phone No.:
Sean Ponist, Esq.	(650) 697-0577	Cotchett, Pitre & McCarthy	

File No.: 104732-010100

Re: Osbelt v. McDonald, et al.

Date: November 28, 2007

No. Pages: Including Cover Sheet 2

If you do not receive all pages properly, please call the Sender.

Notes: Please see the attached correspondence. Thank you.

Also sent via: ☒ US Mail ☐ Overnight ☐ Messenger ☐ Email ☐ No Other

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EXHIBIT E

LAW OFFICES
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840 MALCOLM ROAD

BURLINGAME, CALIFORNIA 94010

TELEPHONE (650) 697-6000

FAX (650) 697-0577

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OF COUNSEL
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MCLEAN, VA 22101
(703) 893-9600

OF COUNSEL
MARK P. FRIEDLANDER, JR.

NEW YORK OFFICE
100 PARK AVENUE, SUITE 2600
NEW YORK, NY 10017
(212) 682-3196

November 29, 2007

VIA FAX: 650-328-8508

Cindy Hamilton
GREENBERG TRAURIG, LLP
1900 University Avenue, Fifth Floor
East Palo Alto CA 94303

Re: *Osbelt v. McDonald, et al.*, Case No. CIV 463528

Dear Cindy:

This letter is in response to your letter of November 28, 2007 and serves to clarify any miscommunication or misunderstanding. As noted in your letter, Plaintiff has agreed to a December 12, 2007 discovery response deadline, but wishes to clarify that we required receipt of all responses and documents by that date. Also, although my office agreed to reconsider our position concerning the production of documents pertaining to Palo Alto Technical, we have not agreed at this point to the production of Palo Alto Technical's documents.

Sincerely,



Sean E. Ponist

Attach.

EXHIBIT F

Hamilton, Cindy (Assoc-SV-LT)

From: Hamilton, Cindy (Assoc-SV-LT)
Sent: Tuesday, December 11, 2007 5:45 PM
To: 'Sean Ponist'
Cc: Ara Jabagchourian
Subject: RE: Osbelt / Mediation and Deposition Dates

Hi Sean,

When you fax your amended responses to me? Are documents being served with those responses?

Cindy

Cindy Hamilton
Greenberg Traurig
hamiltonc@gtlaw.com
650.289.7859

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-----Original Message-----

From: Sean Ponist [mailto:sponist@cpmlegal.com]
Sent: Tuesday, December 11, 2007 5:34 PM
To: Hamilton, Cindy (Assoc-SV-LT)
Cc: Ara Jabagchourian
Subject: RE: Osbelt / Mediation and Deposition Dates

Cindy,

Unfortunately, we are unable to accommodate a switch of their depositions.

We are serving amended responses re the Palo Alto Technical issue which will go out today.

Regards,
Sean

-----Original Message-----

From: hamiltonc@gtlaw.com [mailto:hamiltonc@gtlaw.com]
Sent: Tuesday, December 11, 2007 3:46 PM
To: Sean Ponist
Cc: Ara Jabagchourian
Subject: RE: Osbelt / Mediation and Deposition Dates

Hi Sean,

Can we switch the days for Dave and Donna and have Donna on the 17th and Dave on the 27th?

Thanks,

Cindy

Cindy Hamilton
Greenberg Traurig
hamiltonc@gtlaw.com
650.289.7859

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-----Original Message-----

From: Sean Ponist [mailto:sponist@cpmlegal.com]
Sent: Friday, December 07, 2007 4:37 PM
To: Hamilton, Cindy (Assoc-SV-LT)
Cc: Ara Jabaghourian
Subject: RE: Osbelt / Mediation and Deposition Dates

Cindy,

I will advise JAMs of the tenth.

We will produce documents early next week.

I have not had an opportunity to revisit the Palo Alto Technical issue this week and will address that issue as well early next week.

Have a good weekend,
Sean

-----Original Message-----

From: hamiltonc@gtlaw.com [mailto:hamiltonc@gtlaw.com]
Sent: Friday, December 07, 2007 4:26 PM
To: Sean Ponist
Cc: Ara Jabaghourian
Subject: RE: Osbelt / Mediation and Deposition Dates

Hi Sean,
We can confirm that the 10th works for us as well.
Will you be sending out documents today, and will that production include palo alto technical documents?
Regards,
Cindy

Sent from my GoodLink synchronized handheld (www.good.com)

-----Original Message-----

From: Sean Ponist [mailto:sponist@cpmlegal.com]
Sent: Friday, December 07, 2007 01:48 PM Pacific Standard Time
To: Hamilton, Cindy (Assoc-SV-LT)
Cc: Ara Jabaghourian
Subject: RE: Osbelt / Mediation and Deposition Dates

Cindy,

1/10 is also available - please advise.

Thanks,
Sean

From: hamiltonc@gtlaw.com [mailto:hamiltonc@gtlaw.com]
Sent: Thursday, December 06, 2007 11:40 AM
To: Sean Ponist
Cc: Ara Jabaghourian
Subject: RE: Osbelt / Mediation and Deposition Dates

Hi Sean,

We are good on the three depo dates (although keep the 27th open for Donna because I'd like hers to go on that date if she can move her schedule-I should know soon), but Dave has eye appts on the 7th and 8th.
Did you get any other available days from the mediator?

Thanks,

Cindy

Cindy Hamilton
Greenberg Traurig
hamiltonc@gtlaw.com
650.289.7859

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From: Sean Ponist [mailto:sponist@cpmlegal.com]
Sent: Wednesday, December 05, 2007 4:18 PM
To: Hamilton, Cindy (Assoc-SV-LT)
Cc: Ara Jabaghourian
Subject: Osbelt / Mediation and Deposition Dates Cindy,

Per our discussions, we would propose the following schedule:

- * 12/17 Deposition of David McDonald
- * 12/28 Deposition of Donna McDonald
- * 1/3 Deposition of Jennifer Osbelt
- * 1/7 Mediation

I have confirmed that Judge McDonald is available on the 7th and that no additional fees will be incurred in we continue the mediation at this time. Additionally, we are willing to stipulate that mediation briefs may be filed as late as noon 1/4. Please confirm that the above is agreeable.

Thank you,
Sean

Sean E. Ponist, Principal
Cotchett, Pitre & McCarthy
840 Malcolm Road, Suite 200
Burlingame, CA 94010
(650) 697-6000 (t)
(650) 697-0577 (f)
sponist@cpmlegal.com
www.cpmlegal.com

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<<http://www.gtlaw.com/>>

Osbelt v. McDonald, et al.

Case No. CIV 463528

PROOF OF SERVICE

I, Cathy Sandifer, declare that I am a citizen of the United States, over the age of eighteen years and not a party to the within action. I am an employee of GREENBERG TRAURIG, LLP, and my business address is 1900 University Avenue, Fifth Floor, East Palo Alto, CA 94303. On December 12, 2007, I served the following documents:

DECLARATION OF CINDY HAMILTON IN SUPPORT OF MOTION TO COMPEL PLAINTIFF'S RESPONSES TO DEFENDANTS' REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE

- ☐ by transmitting via **FACSIMILE** the document(s) listed above to the fax numbers) set forth below, or as stated on the attached service list, on this date at approximately _____, from the sending facsimile machine telephone number of 650-289-7893. The transmission was reported as complete and without error by the machine. Pursuant to California Rules of Court, Rule 2008(e)(4), I caused the machine to print a transmission record of the transmission, a copy of which is attached to the original of this declaration. The transmission report was properly issued by the transmitting facsimile machine.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the **UNITED STATES MAIL** at East Palo Alto, California, addressed as set forth below.
- ☒ by **OVERNIGHT MAIL** by placing the document(s) listed above in a sealed overnight mail envelope with postage thereon fully prepaid, addressed as set forth below.
- ☐ **(BY MESSENGER PERSONAL SERVICE)**. I caused delivery of such envelope by hand via courier service to the offices of the addressee.

Sean Ponist, Esq.
Cotchett, Pitre & McCarthy
840 Malcolm Rd., Ste. 200
Burlingame, CA 94010
Fax No. (650) 697-0577

I am readily familiar with the business practice of my place of employment in respect to the collection and processing of correspondence, pleadings and notices for mailing with United States Postal Service/Express Mail, Federal Express and other overnight mail services. The foregoing sealed envelope was placed for collection and mailing this date consistent with the ordinary business practice of my place of employment, so that it will be picked up this date with postage thereon fully prepaid at East Palo Alto, California, in the ordinary course of such business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 12, 2007, at East Palo Alto, California.


Cathy Sandifer

1 GREENBERG TRAURIG, LLP
2 WILLIAM J. GOINES (SBN 61290)
3 KAREN ROSENTHAL (SBN 209419)
4 CINDY HAMILTON (SBN 217951)
5 1900 University Avenue, Fifth Floor
6 East Palo Alto, CA 94303
7 Telephone: (650) 328-8500
8 Facsimile: (650) 328-8508

9 Attorneys for Defendants and Cross-Complainants
10 DAVID MCDONALD, DONNA MCDONALD, NATIONAL
11 EXPERT WITNESS NETWORK, and TECHNOLOGY CLE

E-FILED
SAN MATEO COUNTY

Dec 12 2007

Clerk of the Superior Court
By U. FINAU
DEPUTY CLERK

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN MATEO

14 JENNIFER OSBELT,
15 an individual,

16 Plaintiff,

17 v.

18 DAVID MCDONALD, DONNA K.
19 MCDONALD; and
20 DOES 1-10, inclusive

21 Defendants.

Case No. CIV 463528

**SEPARATE STATEMENT OF
ITEMS IN DISPUTE IN SUPPORT
OF MOTION TO COMPEL
PLAINTIFFS' FURTHER
RESPONSES TO DEFENDANTS'
REQUEST FOR PRODUCTION OF
DOCUMENTS, SET ONE**

Date: January 11, 2008
Time: 9:00 a.m.
Dept. LM

22 AND RELATED CROSS-ACTION

23 Defendants and Cross-Complainants and Cross-Defendants DAVID MCDONALD, DONNA
24 MCDONALD, NATIONAL EXPERT WITNESS NETWORK, and TECHNOLOGY CLE submit their
25 Separate Statement of Items in Dispute in support of their Motion to Compel Plaintiff's Further
26 Responses to Request for Production of Documents, Set One, as required by California Rule of Court,
27 Rule 335, as set forth below.
28

INTRODUCTION

REQUEST FOR PRODUCTION NO. 1:

Palo Alto Technical Expense reimbursements from January 2006 through April 2007.

RESPONSE TO DOCUMENT REQUEST NO. 1:

Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010, 2017.020. Palo Alto Technical is not a party to this litigation nor do any allegations in the complaint or cross-complaint involve Palo Alto Technical.

Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome, oppressive, and/or duplicative.

Plaintiff objects to this request to the extent it requests the disclosure of third party financial records (Rev. & Tax Code § 19542).

Plaintiff objects to this request to the extent that it encompasses documents protected by the attorney/client communication's privilege and/or attorney work product protection. Evid. Code, § 954; Code Civ. Proc., §2018.20; See also, *Pacht & Lewis Architects, Inc. v_ Superior Court* (1996) 47 Cal.App.4th 214.

Subject to the foregoing objections, no documents will be produced responsive to this request

Reason(s) Why Documents Should be Produced:

The Cross-Complaint names as a party "Jennifer Osbelt, individually and doing business as Palo Alto Technical", so Plaintiff's objection that "Palo Alto Technical is not a party to this litigation nor do the allegations in the complaint or cross-complaint involve Palo Alto Technical" is disingenuous and inaccurate. The Cross-Complaint alleges that Plaintiff used the fictitious business name of Palo Alto Technical as a vehicle to submit duplicative and fraudulent expense reimbursements. Therefore, documents pertaining to Palo Alto Technical are critical to Defendants ability to prosecute the Cross-Complaint. The Cross-Complaint contains the following references to Palo Alto Technical.

1 Cross-Complaint, ¶ 8: "**Cross-Defendant Palo Alto Technical** is a fictitious business name
2 registered by Ms. Osbelt in San Mateo County. Cross-Complainants are informed and believe that Ms.
3 Osbelt conducts business under the fictitious business name **Palo Alto Technical**."

4 Cross Complaint ¶ 13: "Ms. Osbelt instructed that check to reimburse her for these expenses be
5 made out in the name of Palo Alto Technical. Expense reports submitted by Ms. Osbelt were submitted
6 both in her name and in the name of **Palo Alto Technical**."

7 Cross-Complaint ¶ 14: "Ms. Osbelt also submitted to NEWN for reimbursement certain
8 expenses which were not related to NEWN business but benefitted Ms. Osbelt's company **Palo Alto**
9 **Technical**, and Ms. Osbelt personally".

10 REQUEST FOR PRODUCTION NO. 2:

11 All DOCUMENTS RELATING to any TCLE patents or patent applications.

12 RESPONSE TO DOCUMENT REQUEST NO. 2:

13 Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or
14 seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible
15 evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010,
16 2017.020.

17 Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome, oppressive,
18 and/or duplicative.

19 Plaintiff objects to this request to the extent that it encompasses documents protected by the
20 attorney/client communication's privilege and/or attorney work product protection. Evid. Code, §
21 954; Code Civ. Proc., §2018.20; See also, *Nacht & Lewis Architects, Inc. v. Superior Court* (1996) 47
22 Cal.App.4th 214.

23 Subject to the foregoing objections, Plaintiff will produce all non-privileged responsive documents
24 in her possession, custody and control which can be located through reasonably diligent search.

25 Reason(s) Why Documents Should be Produced:

26 No documents have been received from Plaintiff.

27 REQUEST FOR PRODUCTION NO. 3:

28 ALL DOCUMENTS RELATING to the U.S. Bank note.

RESPONSE TO DOCUMENT REQUEST NO. 3:

Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010, 2017.020.

Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome, oppressive, and/or duplicative.

Plaintiff objects to this request to the extent that it encompasses documents protected by the attorney/client communication's privilege and/or attorney work product protection. Evid. Code, § 954; Code Civ. Proc., §2018.20; See also, *Nacht & Lewis Architects, Inc. v. Superior Court* (1996) 47 Cal.App.4th 214.

Subject to the foregoing objections, Plaintiff responds as follows: Plaintiff has conducted a diligent search and a reasonable inquiry and is unable to produce any of the requested documents in this category because the requested documents are not in the possession, custody or control of this answering party.

Reason(s) Why Documents Should be Produced:

No documents have been received from Plaintiff.

REQUEST FOR PRODUCTION NO. 4:

ALL DOCUMENTS RELATING to NEWN's 401 K pension plan.

RESPONSE TO DOCUMENT REQUEST NO. 4:

Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010, 2017.020.

Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome, oppressive, and/or duplicative.

Plaintiff objects to this request to the extent that it encompasses documents protected by the attorney/client communication's privilege and/or attorney work product protection. Evid. Code, § 954;

1 Code Civ. Proc., §2018.20; See also, Nacht & Lewis Architects, Inc. v. Superior Court (1996) 47
2 Cal.App.4th 214.

3 Subject to the foregoing objections, Plaintiff responds as follows: Plaintiff has conducted a
4 diligent search and a reasonable inquiry and is unable to produce any of the requested documents in this
5 category because the requested documents are not in the possession, custody or control of this answering
6 party.

7 **Reason(s) Why Documents Should be Produced:**

8 No documents have been received from Plaintiff.

9 **REQUEST FOR PRODUCTION NO. 5:**

10 ALL DOCUMENTS RELATING TO NEWN's profit sharing plan.

11 **RESPONSE TO DOCUMENT REQUEST NO. 5:**

12 Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or
13 seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible
14 evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010,
15 2017.020.

16 Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome, oppressive,
17 and/or duplicative.

18 Plaintiff objects to this request to the extent that it encompasses documents protected by the
19 attorney/client communication's privilege and/or attorney work product protection. Evid. Code, § 954;
20 Code Civ. Proc., §2018.20; See also, Nacht & Lewis Architects, Inc. v. Superior Court (1996) 47
21 Cal.App.4th 214.

22 Subject to the foregoing objections, Plaintiff responds as follows: Plaintiff has conducted a
23 diligent search and a reasonable inquiry and is unable to produce any of the requested documents in this
24 category because the requested documents are not in the possession, custody or control of this answering
25 party.

26 **Reason(s) Why Documents Should be Produced:**

27 No documents have been received responsive from Plaintiff.

28 **REQUEST FOR PRODUCTION NO. 6:**

1 ALL COMMUNICATIONS with Bidwell Consulting.

2 RESPONSE TO DOCUMENT REQUEST NO. 6:

3 Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or
4 seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible
5 evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010,
6 2017.020. As defined, it is not possible for Plaintiff to produce "All COMMUNICATIONS," and she
7 has no obligation to reduce conversations, meetings, etc. to writing.

8 Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome, oppressive,
9 and/or duplicative.

10 Plaintiff objects to this request to the extent that it encompasses documents protected by the
11 attorney/client communication's privilege and/or attorney work product protection. Evid. Code, § 954;
12 Code Civ. Proc., §2018.20; See also, Nacht & Lewis Architects, Inc. v. Superior Court (1996) 47
13 Cal.App.4th 214.

14 Subject to the foregoing objections, Plaintiff will produce all non-privileged responsive
15 documents in her possession, custody and control which can be located through reasonably diligent
16 search.

17 Reason(s) Why Documents Should be Produced:

18 No documents have been received responsive from Plaintiff.

19 REQUEST FOR PRODUCTION NO. 7:

20 ALL COMMUNICATIONS with Edward Jones.

21 RESPONSE TO DOCUMENT REQUEST NO. 7:

22 Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or
23 seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible
24 evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010,
25 2017.020. As defined, it is not possible for Plaintiff to produce "All COMMUNICATIONS," and she
26 has no obligation to reduce conversations, meetings, etc. to writing.

27 Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome, oppressive,
28 and/or duplicative.

1 Plaintiff objects to this request to the extent that it encompasses documents protected by the
 2 attorney/client communication's privilege and/or attorney work product protection. Evid. Code, § 954;
 3 Code Civ. Proc., §2018.20; See also, Nacht & Lewis Architects, Inc. v. Superior Court (1996) 47
 4 Cal.App.4th 214.

5 Subject to the foregoing objections, Plaintiff will produce all non-privileged responsive
 6 documents in her possession, custody and control which can be located through reasonably diligent
 7 search

8 **Reason(s) Why Documents Should be Produced:**

9 No documents have been received responsive from Plaintiff.

10 **REQUEST FOR PRODUCTION NO. 8:**

11 ALL COMMUNICATIONS RELATING to allegations of fraud against the McDonalds or
 12 NEWN.

13 **RESPONSE TO DOCUMENT REQUEST NO. 8:**

14 Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or
 15 seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible
 16 evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010,
 17 2017.020. As defined, it is not possible for Plaintiff to produce "All COMMUNICATIONS," and she
 18 has no obligation to reduce conversations, meetings, etc. to writing.

19 Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome, oppressive,
 20 and/or duplicative.

21 Plaintiff objects to this request to the extent that it encompasses documents protected by the
 22 attorney/client communication's privilege and/or attorney work product protection. Evid. Code, § 954;
 23 Code Civ. Proc., §2018.20; See also, Nacht & Lewis Architects, Inc. v. Superior Court (1996) 47
 24 Cal.App.4th 214.

25 Subject to the foregoing objections, Plaintiff will produce all non-privileged responsive
 26 documents in her possession, custody and control which can be located through reasonably diligent
 27 search.

28 **Reason(s) Why Documents Should be Produced:**

No documents have been received responsive from Plaintiff.

REQUEST FOR PRODUCTION NO. 9:

ALL COMMUNICATIONS RELATING to allegations of embezzlement against the McDonalds or NEWN.

RESPONSE TO DOCUMENT REQUEST NO. 9:

Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010, 2017.020. As defined, it is not possible for Plaintiff to produce "All COMMUNICATIONS," and she has no obligation to reduce conversations, meetings, etc. to writing.

Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome, oppressive, and/or duplicative.

Plaintiff objects to this request to the extent that it encompasses documents protected by the attorney/client communication's privilege and/or attorney work product protection. Evid. Code, § 954; Code Civ. Proc., §2018.20; See also, Nacht & Lewis Architects, Inc. v. Superior Court (1996) 47 Cal.App.4th. 214.

Subject to the foregoing objections, Plaintiff responds as follows: Plaintiff has conducted a diligent search and a reasonable inquiry and is unable to produce any of the requested documents in this category because the requested documents are not in the possession, custody or control of this answering party.

Reason(s) Why Documents Should be Produced:

No documents have been received responsive from Plaintiff.

REQUEST FOR PRODUCTION NO. 10:

ALL DOCUMENTS RELATING to the books and records of Palo Alto Technical.

RESPONSE TO DOCUMENT REQUEST NO. 10:

Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010,

2017.020. Palo Alto Technical is not a party to this litigation nor do any allegations in the complaint or cross-complaint involve Palo Alto Technical.

Plaintiff objects to this request to the extent that it encompasses documents protected by the attorney/client communication's privilege and/or attorney work product protection. Evid. Code, § 954; Code Civ. Proc., §2018.20; See also, Nacht & Lewis Architects, Inc. v. Superior Court (1996) 47 Cal.App.4th 214.

Plaintiff further objects to this request to the extent that it calls for productions of trade secrets section (Evid. Code § 1060), violates the tax payer privilege (Rev. & Tax Code § 19542), and requires the disclosure of third party financial records (Cal. Const. Art. 1, §1).

Subject to the foregoing objections, no documents will be produced responsive to this request.

Reason(s) Why Documents Should be Produced:

The Cross-Complaint names as a party "Jennifer Osbelt, individually and doing business as Palo Alto Technical", so Plaintiff's objection that "Palo Alto Technical is not a party to this litigation nor do the allegations in the complaint or cross-complaint involve Palo Alto Technical" is disingenuous and inaccurate. The Cross-Complaint alleges that Plaintiff used the fictitious business name of Palo Alto Technical as a vehicle to submit duplicative and fraudulent expense reimbursements. Therefore, documents pertaining to Palo Alto Technical are critical to Defendants ability to prosecute the Cross-Complaint. The Cross-Complaint contains the following references to Palo Alto Technical.

Cross-Complaint, ¶ 8: "**Cross-Defendant Palo Alto Technical** is a fictitious business name registered by Ms. Osbelt in San Mateo County. Cross-Complainants are informed and believe that Ms. Osbelt conducts business under the fictitious business name **Palo Alto Technical**."

Cross Complaint ¶ 13: "Ms. Osbelt instructed that check to reimburse her for these expenses be made out in the name of Palo Alto Technical. Expense reports submitted by Ms. Osbelt were submitted both in her name and in the name of **Palo Alto Technical**."

Cross-Complaint ¶ 14: "Ms. Osbelt also submitted to NEWN for reimbursement certain expenses which were not related to NEWN business but benefitted Ms. Osbelt's company **Palo Alto Technical**, and Ms. Osbelt personally".

REQUEST FOR PRODUCTION NO. 11:

ALL DOCUMENTS RELATING to any bank statements or account summaries of Palo Alto Technical.

RESPONSE TO DOCUMENT REQUEST NO. 11:

Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010, 2017.020. Palo Alto Technical is not a party to this litigation nor do any allegations in the complaint or cross-complaint involve Palo Alto Technical.

Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome, oppressive, and/or duplicative.

Plaintiff objects to this request to the extent it requests the disclosure of third party financial records (Rev. & Tax Code § 19542).

Plaintiff objects to this request to the extent that it encompasses documents protected by the attorney/client communication's privilege and/or attorney work product protection. Evid. Code, § 954; Code Civ. Proc., §2018.20; See also, Nacht & Lewis Architects, Inc. v. Superior Court (1996) 47 Cal.App.4th 214.

Subject to the foregoing objections, no documents will be produced responsive to this request.

Reason(s) Why Documents Should be Produced:

The Cross-Complaint names as a party "Jennifer Osbelt, individually and doing business as Palo Alto Technical", so Plaintiff's objection that "Palo Alto Technical is not a party to this litigation nor do the allegations in the complaint or cross-complaint involve Palo Alto Technical" is disingenuous and inaccurate. The Cross-Complaint alleges that Plaintiff used the fictitious business name of Palo Alto Technical as a vehicle to submit duplicative and fraudulent expense reimbursements. Therefore, documents pertaining to Palo Alto Technical are critical to Defendants ability to prosecute the Cross-Complaint. The Cross-Complaint contains the following references to Palo Alto Technical.

1 Cross-Complaint, ¶ 8: “**Cross-Defendant Palo Alto Technical** is a fictitious business name
2 registered by Ms. Osbelt in San Mateo County. Cross-Complainants are informed and believe that Ms.
3 Osbelt conducts business under the fictitious business name **Palo Alto Technical**.”

4 Cross Complaint ¶ 13: “Ms. Osbelt instructed that check to reimburse her for these expenses be
5 made out in the name of Palo Alto Technical. Expense reports submitted by Ms. Osbelt were submitted
6 both in her name and in the name of **Palo Alto Technical**.”

7 Cross-Complaint ¶ 14: “Ms. Osbelt also submitted to NEWN for reimbursement certain
8 expenses which were not related to NEWN business but benefitted Ms. Osbelt’s company **Palo Alto**
9 **Technical**, and Ms. Osbelt personally”.

10 REQUEST FOR PRODUCTION NO. 12:

11 ALL DOCUMENTS RELATING to tax returns RELATING to Palo Alto Technical.

12 RESPONSE TO DOCUMENT REQUEST NO. 12:

13 Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or
14 seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible
15 evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010,
16 2017.020. Palo Alto Technical is not a party to this litigation nor do any allegations in the complaint or
17 cross-complaint involve Palo Alto Technical.

18 Plaintiff objects to this request to the extent that it encompasses documents protected by the
19 attorney/client communication's privilege and/or attorney work product protection. Evid. Code, § 954;
20 Code Civ. Proc., §2018.20; See also, Nacht & Lewis Architects, Inc. v. Superior Court (1996) 47
21 Cal.App.4th 214.

22 Plaintiff further objects to this request to the extent that it calls for productions of trade secrets
23 section (Evid. Code § 1060), violates the tax payer privilege (Rev. & Tax Code § 19542), and requires
24 the disclosure of third party financial records (Cal. Const. Art. 1, §1).

25 Subject to the foregoing objections, no documents will be produced responsive to this request.

26 Reason(s) Why Documents Should be Produced:

27 The Cross-Complaint names as a party “Jennifer Osbelt, individually and doing business as Palo
28 Alto Technical”, so Plaintiff’s objection that “Palo Alto Technical is not a party to this litigation nor do

the allegations in the complaint or cross-complaint involve Palo Alto Technical” is disingenuous and inaccurate. The Cross-Complaint alleges that Plaintiff used the fictitious business name of Palo Alto Technical as a vehicle to submit duplicative and fraudulent expense reimbursements. Therefore, documents pertaining to Palo Alto Technical are critical to Defendants ability to prosecute the Cross-Complaint. The Cross-Complaint contains the following references to Palo Alto Technical.

Cross-Complaint, ¶ 8: “**Cross-Defendant Palo Alto Technical** is a fictitious business name registered by Ms. Osbelt in San Mateo County. Cross-Complainants are informed and believe that Ms. Osbelt conducts business under the fictitious business name **Palo Alto Technical**.”

Cross Complaint ¶ 13: “Ms. Osbelt instructed that check to reimburse her for these expenses be made out in the name of Palo Alto Technical. Expense reports submitted by Ms. Osbelt were submitted both in her name and in the name of **Palo Alto Technical**.”

Cross-Complaint ¶ 14: “Ms. Osbelt also submitted to NEWN for reimbursement certain expenses which were not related to NEWN business but benefitted Ms. Osbelt’s company **Palo Alto Technical**, and Ms. Osbelt personally”.

REQUEST FOR PRODUCTION NO. 13:

ALL DOCUMENTS RELATING to any statement made by YOU in the last twelve months concerning the McDonalds.

RESPONSE TO DOCUMENT REQUEST NO. 13:

Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010, 2017.020.

Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome, ppressive, and/or duplicative.

Plaintiff objects to this request to the extent that it encompasses documents protected by the attorney/client communication’s privilege and/or attorney work product protection. Evid. Code, § 954; Code Civ. Proc., §2018.20; See also, Nacht & Lewis Architects, Inc. v. Superior Court (1996) 47 Cal.App.4th 214.

1 Subject to the foregoing objections, Plaintiff will produce all non-privileged responsive
2 documents in her possession, custody and control which can be located through reasonably diligent
3 search.

4 **Reason(s) Why Documents Should be Produced:**

5 No documents have been received from Plaintiff.

6 **REQUEST FOR PRODUCTION NO. 14:**

7 ALL DOCUMENTS YOU received from Cross-Complainants or their accountants RELATING
8 TO the financial condition of NEWN.

9 **RESPONSE TO DOCUMENT REQUEST NO. 14:**

10 Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or
11 seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible
12 evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010,
13 2017.020.

14 Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome, oppressive,
15 and/or duplicative.

16 Subject to the foregoing objections, Plaintiff will produce all non-privileged responsive
17 documents in her possession, custody and control which can be located through reasonably diligent
18 search.

19 **Reason(s) Why Documents Should be Produced:**

20 No documents have been received from Plaintiff.

21 **REQUEST FOR PRODUCTION NO. 15:**

22 ALL DOCUMENTS RELATING to requests from YOU for financial information of NEWN.

23 **RESPONSE TO DOCUMENT REQUEST NO. 15:**

24 Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or
25 seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible
26 evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010,
27 2017.020.

1 Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome, oppressive,
2 and/or duplicative.

3 Plaintiff objects to this request to the extent that it encompasses documents protected by the
4 attorney/client communication's privilege and/or attorney work product protection. Evid. Code, § 954;
5 Code Civ. Proc., §2018.20; See also, Nacht & Lewis Architects, Inc. v. Superior Court (1996) 47
6 Cal.App.4th 214.

7 Subject to the foregoing objections, Plaintiff will produce all non-privileged responsive
8 documents in her possession, custody and control which can be located through reasonably diligent
9 search.

10 **Reason(s) Why Documents Should be Produced:**

11 No documents have been received from Plaintiff.

12 **REQUEST FOR PRODUCTION NO. 16:**

13 ALL DOCUMENTS REGARDING YOUR alleged acceptance of DAVID MCDONALD's
14 offer to purchase YOUR membership interest in NEWN.

15 **RESPONSE TO DOCUMENT REQUEST NO. 16:**

16 Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or
17 seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible
18 evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010,
19 2017.020.

20 Plaintiff objects to this request to the extent that it is argumentative, mischaracterizes the
21 evidence, assumes facts, and/or lacks foundation.

22 Plaintiff objects to this request to the extent that it encompasses documents protected by the
23 attorney/client communication's privilege and/or attorney work product protection. Evid. Code, § 954;
24 Code Civ. Proc., §2018.20; See also, Nacht & Lewis Architects, Inc. v. Superior Court (1996) 47
25 Cal.App.4th 214.

26 Subject to the foregoing objections, Plaintiff will produce all non-privileged responsive
27 documents in her possession, custody and control which can be located through reasonably diligent
28 search.

1 **Reason(s) Why Documents Should be Produced:**

2 No documents have been received from Plaintiff.

3 **REQUEST FOR PRODUCTION NO. 17:**

4 ALL DOCUMENTS RELATING TO any tax deferred deductions or investment credits YOU
5 claimed on YOUR 2004, 2005, and 2006 tax returns filed while a member of NEWN.

6 **RESPONSE TO DOCUMENT REQUEST NO. 17:**

7 Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or
8 seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible
9 evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010,
10 2017.020. Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome,
11 oppressive, and/or duplicative.

12 Plaintiff objects to this request on the basis that it seeks information protected by Jennifer
13 Osbelt's right to privacy by seeking personal financial information. (Cal. Const. Art. I, § 1). This request
14 also seeks information protected by the tax payer privilege (Rev. & Tax Code § 19542).

15 Plaintiff objects to this request to the extent that it encompasses documents protected by the
16 attorney/client communication's privilege and/or attorney work product protection. Evid. Code, § 954;
17 Code Civ. Proc., §2018.20; See also, *Nacht & Lewis Architects, Inc. v. Superior Court* (1996) 47
18 Cal.App.4th 214.

19 Subject to the foregoing objections, no documents will be produced responsive to this request.

20 **Reason(s) Why Documents Should be Produced:**

21 No documents have been received from Plaintiff.

22 **REQUEST FOR PRODUCTION NO. 18:**

23 ALL DOCUMENTS relating to YOUR trip to Mexico in January 2006.

24 **RESPONSE TO DOCUMENT REQUEST NO. 18:**

25 Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous, and/or
26 seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible
27 evidence, and/or seeks information equally available to the asking party. Code Civ. Proc., §§ 2017.010,
28 2017.020.

1 Plaintiff objects to this request on the basis that it is cumulative, unduly burdensome, oppressive,
2 and/or duplicative.

3 Plaintiff objects to this request on the grounds that it seeks information protected by her right of
4 privacy (Cal. Const. Art. I, § 1).

5 Plaintiff objects to this request to the extent that it encompasses documents protected by the
6 attorney/client communication's privilege and/or attorney work product protection. Evid. Code, § 954;
7 Code Civ. Proc., §2018.20; See also, Nacht & Lewis Architects, Inc. v. Superior Court (1996) 47
8 Cal.App.4th 214.

9 Subject to the foregoing objections, no documents will be produced responsive to this request.

10 **Reason(s) Why Documents Should be Produced:**

11 No documents have been received from Plaintiff.
12
13

14 DATED: December 12, 2007

GREENBERG TRAURIG, LLP

15
16 By Cindy Hamilton
17 William J. Goines
18 Cindy Hamilton

19 Attorneys for Defendants and Cross-Complainants
20 DAVID MCDONALD, DONNA MCDONALD,
21 NATIONAL EXPERT WITNESS NETWORK, and
22 TECHNOLOGY CLE
23
24
25
26
27
28

Osbelt v. McDonald, et al.

Case No. CIV 463528

PROOF OF SERVICE

I, Cathy Sandifer, declare that I am a citizen of the United States, over the age of eighteen years and not a party to the within action. I am an employee of GREENBERG TRAURIG, LLP, and my business address is 1900 University Avenue, Fifth Floor, East Palo Alto, CA 94303. On December 12, 2007, I served the following documents:


SEPARATE STATEMENT OF DISPUTED ITEMS IN SUPPORT OF MOTION TO COMPEL PLAINTIFF'S RESPONSES TO DEFENDANTS' REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE

- ☐ by transmitting via **FACSIMILE** the document(s) listed above to the fax numbers) set forth below, or as stated on the attached service list, on this date at approximately _____, from the sending facsimile machine telephone number of 650-289-7893. The transmission was reported as complete and without error by the machine. Pursuant to California Rules of Court, Rule 2008(e)(4), I caused the machine to print a transmission record of the transmission, a copy of which is attached to the original of this declaration. The transmission report was properly issued by the transmitting facsimile machine.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the **UNITED STATES MAIL** at East Palo Alto, California, addressed as set forth below.
- ☒ by **OVERNIGHT MAIL** by placing the document(s) listed above in a sealed overnight mail envelope with postage thereon fully prepaid, addressed as set forth below.
- ☐ **(BY MESSENGER PERSONAL SERVICE)**. I caused delivery of such envelope by hand via courier service to the offices of the addressee.

Sean Ponist, Esq.
Cotchett, Pitre & McCarthy
840 Malcolm Rd., Ste. 200
Burlingame, CA 94010
Fax No. (650) 697-0577

I am readily familiar with the business practice of my place of employment in respect to the collection and processing of correspondence, pleadings and notices for mailing with United States Postal Service/Express Mail, Federal Express and other overnight mail services. The foregoing sealed envelope was placed for collection and mailing this date consistent with the ordinary business practice of my place of employment, so that it will be picked up this date with postage thereon fully prepaid at East Palo Alto, California, in the ordinary course of such business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 12, 2007, at East Palo Alto, California.


Cathy Sandifer

1
Proof of Service

RECYCLED PAPER MADE FROM 30% POST CONSUMER CONTENT



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7 Attorneys for Plaintiff Jennifer Osbelt

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN MATEO**

10
11 JENNIFER OSBELT,

12 Plaintiff,

13 v.

14 DAVID D. MCDONALD, DONNA K.
MCDONALD, NATIONAL EXPERT
15 WITNESS NETWORK, a California
Limited Liability Company, and DOES 1-
16 10, inclusive,

17 Defendants.

18
19 DAVID D. McDONALD; DONNA K.
McDONALD; NATIONAL EXPERT
WITNESS NETWORK, a California
20 Limited Liability Company;
TECHNOLOGY CLE, a
21 California Limited Liability Company,

22 Cross-Complainants,

23 v.

24 JENNIFER OSBELT, individually and
doing business as PALO ALTO
25 TECHNICAL, and ROES 1-10, inclusive,

26 Cross-Defendants.
27
28

Case No. CIV463528

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION TO COMPEL DEFENDANTS
DAVID AND DONNA MCDONALD (1) TO
PRODUCE DOCUMENTS AND (2) FOR
SANCTIONS**

Hearing Date: January ¹⁵ 14, 2008
Hearing Time: 9:00 a.m.
Department: LM

Trial: May 12, 2008

**PLAINTIFF'S NOTICE OF MOTION AND MOTION TO COMPEL DEFENDANTS DAVID
AND DONNA MCDONALD (1) TO PRODUCE DOCUMENTS AND (2) FOR SANCTIONS**

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NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 11, 2007, at 9:00 a.m. in the Law and Motion Department or in such other Court as may be assigned, located at 400 County Center, Redwood City, California, Plaintiff Jennifer Osbelt ("Plaintiff") will move the Court for an Order (1) compelling Defendants David and Donna McDonald ("Defendants") to produce documents and (2) for sanctions. This motion is made on the grounds that Defendants have refused to produce documents or have agreed to produce documents but failed to do so.

Defendants' refusal and failure to produce documents requested over four months ago is in violation of their discovery obligations under the California Code of Civil Procedure. Plaintiff initially propounded requests for production of documents on Defendants on August 1, 2007. Having received no documents in response thereto, Plaintiff incorporated those requests into deposition document requests which were served on both. Having not received responsive documents at the deposition or afterwards, Plaintiff now moves to compel and for sanctions against both Defendants based on their refusal or failure to produce responsive documents. Their delay has prejudiced Plaintiff's ability to conduct meaningful discovery and prosecute and defend claims in this action.

Said Motion will be based upon this Notice and Motion, the Memorandum of Points and Authorities in support thereof, the Separate Statement of Disputed Requests and Responses, the Declaration of Sean E. Ponist ("Ponist Decl.") and upon such other evidence, oral or documentary, as may be introduced at the hearing of this Motion, and upon the Court's entire file in this matter.

DATED: December 16, 2007

COTCHETT, PITRE & McCARTHY

By:



SEAN E. PONIST

Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This case involves a member dispute in two limited liability companies: National Expert Witness Network ("NEWN") and Technology Continuing Legal Education ("TCLE"). The dispute originated when Plaintiff Jennifer Osbelt ("Plaintiff") questioned one of the financial statements of Defendants David and Donna McDonald ("Defendants"). Concerned about the financial irregularity, she asked to see the company's books and records. Defendants refused to provide the books and records.

Defendants then agreed to purchase Plaintiff's interest in NEWN for just over \$1.8 million, but later reneged on the agreement, claiming that they had mistakenly calculated the purchase price. Plaintiff again requested that Defendants provide her access to the company's books and records; again Defendants refused her access. Defendants then proceeded to exclude Plaintiff from management or any other involvement in the company. Menawhile they continued to engage in self-dealing and continued to deny Plaintiff access to NEWN's books and records and other financial information.

Finally, Plaintiff filed a complaint on June 5, 2007, setting forth causes of action for, *inter alia*, breach of contract/operating agreement, breach of fiduciary duty, accounting violations and violations of the Beverly-Killea Limited Liability Company Act against Defendants. Plaintiff filed an Amended Complaint on December 4, 2007, adding additional causes of action for, *inter alia*, corporate waste, conversion and unjust enrichment. Both complaints specifically alleged that Defendants had prepared false financial statements, filed false tax returns and generally failed to maintain books and records as required by the law. See e.g., Original Complaint at ¶ 2, 2:10-12, ¶ 212:20-21; ¶¶ 59.5, 59.6, 12:22-26; ¶¶ 63-67, 13:8-18; ¶¶ 74.1, 14:10-11.

As the companies' financials are critical to this litigation, Plaintiff's document requests asked for the books and records and other financial documents reflecting the income and expenses of NEWN and TCLE. Defendants responded by either refusing to produce the documents on the grounds that they are irrelevant or agreed to produce the documents but then

1 failed to do so. The requested documents are needed to establish Plaintiff's claims, defenses, as
 2 well as damages.¹ Defendants' response has been dilatory and their refusal or failure to produce
 3 documents without justification. For the foregoing reasons, Plaintiff requests that this Court
 4 grant this motion to compel documents and for sanctions.

5 II.

6 PROCEDURAL HISTORY

7 Plaintiff first served a request for production of documents on Defendants on August 1,
 8 2007. Ponist Decl. ¶ 2. Plaintiff additionally requested production of these same items at the
 9 depositions of David and Donna McDonald noticed for and taken on October 17, 2007 and
 10 October 18, 2007 respectively. Ponist Decl. ¶ 6, Ex. A and B. Shortly before these two
 11 depositions, Defendants produced some responsive documents, but refused or failed to produced
 12 many other responsive documents. Ponist Decl. ¶ 9.

13 Prior to, during and subsequent to these depositions, Plaintiff's counsel engaged in
 14 extensive communication and correspondence with defense counsel in an effort to secure the
 15 responsive documents without need for court intervention. Ponist Decl. ¶¶ 10, 12, 13, 16, 17,
 16 Exs. E, F, and G. On October 20, 2007 and December 12, 2007, Defendants finally produced
 17 additional documents, but still had failed to produce many material, responsive documents.
 18 Defendants' delay in producing documents has prejudiced Plaintiff's ability to conduct discovery
 19 and prosecute and defend claims in this action. This motion to compel production of documents
 20 and for sanctions follows.

21 III.

22 LEGAL STANDARD

23 The scope of discovery is defined by Code of Civil Procedure section 2017.010, which
 24 states:

25 ///

26 _____
 27 ¹One measure of Plaintiff's damages is by determining the value of her interest in NEWN.
 28 This may be accomplished only by accurately determining the value of the company by a
 complete review of the its books and records.

[A]ny party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party seeking discovery or of any other party to the action.

Code Civ. Proc., § 2017.010.

“In the context of discovery, evidence is ‘relevant’ if it might reasonably assist a party in evaluating its case, preparing for trial, or facilitating a settlement. Admissibility is *not* the test, and it is sufficient if the information sought might reasonably lead to other, admissible evidence.” *Glenfed Dev. Corp. v. Superior Court* (1997) 53 Cal.App.4th 1113, 1117 (original emphasis); see also *TBG Ins. Servs. Corp. v. Superior Court* (2002) 96 Cal.App.4th 443, 448. “For discovery purposes, information is relevant if it ‘might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement.’” *Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1611 (citation omitted) (emphasis in original). California’s discovery rules are liberally construed, and any doubt is generally resolved in favor of permitting discovery. See *Colonial Life & Accident Ins. Co. v. Superior Court* (1982) 31 Cal.3d 785, 790.

IV.

ARGUMENT

A. Defendants have refused to produce books and records, accounting statements and documents and other relevant financial information

This case arises out of a financial dispute between members of the NEWN and TCLE limited liability companies. As with any partnership or member dispute, critical to the claims and recovery of damages are the books and records and financials of the company. Thus far, Defendants have refused or otherwise failed to produce this much of this material information despite repeated discovery requests and meet and confer attempts.

///

1 **1. Defendants have failed to produce books and records and accounting**
2 **statements**

3 Document request 15 required that Defendants produce books and records for NEWN and
4 document requests 36 and 37 required production of documents produced to NEWN's and
5 TCLE's accountants. Defendants responded that they would "produce documents not previously
6 produced to Plaintiff," but also objected that such a request is "not reasonably calculated to lead
7 to the discoverable information" or that the requests for accounting documents "violated taxpayer
8 privilege."

9 To begin with, the scope of discovery is defined to include all information and documents
10 "reasonably calculated to lead to the discovery of admissible evidence" not "reasonably
11 calculated to lead to the discoverable information" as stated by Defendants. Regardless, as this
12 information is directly relevant to the allegations and claims in the complaint, it is within the
13 scope of discovery. Additionally, contrary to their suggestion, Defendants never previously
14 produced documents. Their first production of documents in this case did not occur until after
15 they served their response to the document requests. Moreover, as indicated in great detail in the
16 complaint, Defendants never provided such documents prior to the commencement of litigation
17 despite Plaintiff's and her counsel's repeated efforts to obtain the information. See generally,
18 Original Complaint ¶¶ 32-43, 7:25-10-7. Lastly, Defendants cannot assert the taxpayer privilege
19 against Plaintiff, a member of the limited liability companies and thereby one of the taxpayers
20 herself. The privilege does not apply to her and she is entitled to this information.

21 So far, Defendants have merely provided financial summaries created by or on behalf of
22 themselves, refusing to produce source documents establishing the income received and expenses
23 incurred. Defendants have insisted, without basis, that Plaintiff is only entitled to the financial
24 summaries which they, themselves, have created. But Plaintiff, under the Beverly-Killea Limited
25 Liability Company Act, terms of the Operating Agreement, and the Code of Civil Procedure, is
26 entitled to an accounting, including the actual income and expense information, and not merely
27 some summary thereof. This information goes to the core of this case and is necessary to prove
28 Plaintiff's claims and damages.

1 **2. Defendants have refused to produce complete tax records for NEWN and**
 2 **TCLE**

3 Defendants have refused to produce tax records, claiming that the requests "violates the
 4 taxpayer privilege" (see document requests 11 and 12). But, as discussed above, Defendants
 5 cannot assert the taxpayer privilege against Plaintiff, a member of the limited liability companies
 6 and thereby one of the taxpayers herself. The privilege does not apply to her and she is entitled
 7 to this information just as much as Defendants. Belatedly, Defendants have recently produced
 8 tax records for NEWN for 2004 through 2006. But Defendants still have not produced tax
 9 records from the inception of NEWN in 2002 nor have they produced any tax records or
 10 information for TCLE.

11 **3. Defendants have refused to produce documents relating to expenses**
 12 **charged to NEWN and TCLE and payments made by NEWN or TCLE**

13 Plaintiff has requested production of expense claims submitted to NEWN and TCLE,
 14 companies to which she is a member, as well as documents relating to payments by NEWN and
 15 TCLE to Defendants and herself (see document requests 19, 20, 22-29). Defendants have
 16 refused to produce any responsive documents to these requests, claiming that the requests are
 17 "not reasonably calculated to lead to discoverable information as this request does not related to
 18 the allegations contained in the Complaint or Cross-Complaint."² Nothing could be farther from
 19 the truth.

20 The Original Complaint sets forth causes of action against Defendants for breach of
 21 fiduciary duty, accounting violations and violations the Beverly-Killea Limited Liability
 22 Company Act, all of which place at issue payments received by Defendants. Additionally, the
 23 complaint specifically alleged, *inter alia*, that the McDonalds had falsified financial statements
 24 and that an accurate accounting was necessary to determine the value of Plaintiff's interest in
 25
 26

27 ²In response to request 25, Defendants did not even state an objection or provide a ground
 28 for their refusal to produce responsive documents. As such, any objections are waived and all
 responsive documents must be produced. *Stadish v. Sup. Ct.* (1999) 71 Cal.App.4th 1130, 1141.

1 NEWN. Original Complaint at ¶¶ 2, 61-77, 2:10-12, 13:4-18. All of the foregoing placed the
2 validity of payments received by Defendants at issue.

3 Additionally, Defendants alleged in their Cross-Complaint that Plaintiff submitted false
4 and duplicative expense reimbursement requests and thereby asserted causes of action for fraud
5 and breach of fiduciary duty against her. See Cross-Complaint, Second and Third Causes of
6 Action. These claims necessarily require an understanding of expenses charged to NEWN by
7 Plaintiff. Information concerning payments to Plaintiff are also necessary for accounting
8 purposes and determining the value of her capital account. Thus, these documents are directly
9 related to the claims and cross-claims in this action.

10 **4. Defendants have failed to produce complete bank statements and records**

11 Document requests 16 and 17 requested documents relating to NEWN's and TCLE's
12 bank statements or account summaries. Defendants responded that they "will produce
13 documents not previously produced to Plaintiff." Contrary to their suggestion, once again,
14 Defendants never had previously produced any of these documents.

15 This information is relevant to establish, *inter alia*, the validity of any loans which
16 Defendants have purportedly made to NEWN as well as any payments that NEWN and TCLE
17 have made to them. To the extent that Defendants have produced bank statements, they contain
18 gaps which may omit material information related to the purported loans and payments received
19 by Defendants. Although Defendants provided some bank statements, they omitted statements
20 from December 2002 through August 2003, from October 2003 through December 2003, and
21 from May of this year to the time of production. This information is relevant to Plaintiff's breach
22 of fiduciary duty claims, accounting claims as well as her more recently filed corporate waste,
23 conversion and unjust enrichment claims.

24 **B. Defendants have failed to produce documents relating to Plaintiff's 401k and Profit**
25 **Sharing Plans**

26 Without Plaintiff's consent, Defendants had diverted her share of the profits to NEWN's
27 401k and profit sharing plans. Plaintiff has since been denied access to these funds. Defendants
28 indicated that they would produce documents related to plans (see document requests and

responses 46-49). Nonetheless, other than some miscellaneous correspondence, Defendants have failed to produce these documents. These documents are relevant in part to establishing a portion of Plaintiff's damages claim. To date, Defendants have failed to produce any plan information, agreements or authorizations for these plans.

C. Defendants have failed to produce responsive documents relating to consulting fees paid to Defendants by NEWN and TCLE

Document requests 52 and 53 requested all documents related to consulting fee payments which Defendants had arranged for NEWN and TCLE to pay. Defendants responded that they would "produce documents responsive" to these requests. Defendants recently produced summary payment information created by or on behalf of themselves, but, once again, failed to provide copies of any of the source documents which actually evidence details the payments made. Rather than provide bank statements, checks, or money transfers, Defendants merely provided their own summary invoices. This information is highly relevant to, *inter alia*, Plaintiff's breach of fiduciary duty claims and accounting claims. Plaintiff is entitled to the actual payment information and not merely Defendant's representation thereof.

D. Defendants have failed to produce any documents related to the governance of TCLE

Defendants have asserted claims on behalf of TCLE against Plaintiff for her alleged interference with its patent rights. Plaintiff requested documents concerning the governance of TCLE to establish, *inter alia*, the obligations, if any, that the members had to each other relating to the filing and prosecution of patents for which Defendants have claimed damages in their Cross-Complaint (see document request 43). Defendants agreed to provide responsive documents, but, to date, Plaintiff has not received any documents relating to the governance of TCLE. Defendants have not produced the Operating Agreement, Articles of Organization, bylaws or any other documents concerning TCLE's operation.

E. Defendants dilatory conduct, without justification, warrants sanctions

Plaintiff seeks sanctions against Defendants for their dilatory conduct. See generally, Code Civ. Pro. § 2023.030(a); see also, *London v. Dri-Honing Corp.* (2004) 117 Cal.4th 999,

1 1006, 1009-1010. Where discovery violations are substantial and wilful, monetary sanctions and
 2 reasonable attorney fees recoupment are warranted. *Young v. Rosenthal* (1989) 212 Cal.App.3d
 3 96, 120. Refusal to comply with discovery obligations without substantial justification justifies a
 4 trial court ordering reasonable expenses against the offending party. *Frey v. Superior Court*
 5 (1965) 237 Cal.App.2d 201, 204.

6 Defendants are members and managers of the NEWN and TCLE. As Defendants have
 7 excluded Plaintiff from management and prevented her from accessing the books and records and
 8 other financial information, they are in exclusive custody and control of the responsive
 9 documents. Their objections have been baseless and their delay without excuse. Plaintiff's
 10 counsel, Sean E. Ponist has spent a total of eight hours researching and preparing this motion and
 11 anticipates spending another three hours drafting a reply and arguing the matter at hearing at an
 12 hourly rate of \$250 for a total of \$2,750. Ponist Decl., ¶ 18.

13 V.

14 CONCLUSION

15 For the foregoing reasons, Plaintiff requests that the Court grant this motion to compel
 16 production of documents and for sanctions.

17
 18 Dated: December 18, 2007

COTCHETT, PITRE & McCARTHY

19
 20 By


 SEAN E. PONIST

Attorneys for Plaintiff

Jennifer Osbelt, v. David D. McDonald, Donna K. McDonald, et al.
 San Mateo Superior Court CIV 463528

PROOF OF SERVICE

I am employed in San Mateo County, which is where service of the document(s) referred to below occurred. I am over the age of 18 and not a party to the within action. My business address is Cotchett, Pitre & McCarthy, San Francisco Airport Center, 840 Malcolm Road, Suite 200, Burlingame, California 94010. I am readily familiar with Cotchett, Pitre & McCarthy's practices for the service of documents. On this date, I served a true copy of the following document(s) in the manner listed below:

PLAINTIFF'S NOTICE OF MOTION AND MOTION TO COMPEL DEFENDANTS DAVID AND DONNA MCDONALD (1) TO PRODUCE DOCUMENTS AND (2) FOR SANCTIONS

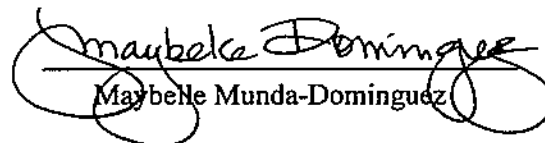
BY MAIL: I am readily familiar with this firm's practice for collection and processing of correspondence for mailing. Following that practice, I placed a true copy of the aforementioned document(s) in a sealed envelope, addressed to each addressee, respectively, as specified below. The envelope was placed in the mail at my business address, with postage thereon fully prepaid, for deposit with the United States Postal Service on that same day in the ordinary course of business.

XXX BY HAND DELIVERY: I am readily familiar with this firm's practice for causing documents to be served by hand delivery. Following that practice, I caused the sealed envelope containing the aforementioned document(s) to be hand delivered to the addressee(s) specified below.

William J. Goines
 Karen Rosenthal
 Cindy Hamilton
GREENBERG TRAUIG, LLP
 1900 University Avenue, Fifth Floor
 East Palo Alto, CA 94303
 Tel.: (650) 328-8500
 Fax: (650) 328-8508

BY OVERNIGHT COURIER SERVICE: I am readily familiar with this firm's practice for causing documents to be served by overnight courier. Following that practice, I caused the sealed envelope containing the aforementioned document(s) to be delivered via overnight courier service to the addressee(s) specified below:

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Burlingame, California, on December 18, 2007.


 Maybelle Munda-Dominguez

1 JOSEPH C. COTCHETT (#168009)
2 ARA R. JABAGCHOURIAN (#205777)
3 SEAN E. PONIST (#204712)
4 **COTCHETT, PITRE & McCARTHY**
5 San Francisco Airport Office Center
6 840 Malcolm Road, Suite 200
7 Burlingame, CA 94010
8 Telephone: (650) 697-6000
9 Facsimile: (650) 697-0577

10 Attorneys for Plaintiff

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF SAN MATEO**

13 JENNIFER OSBELT,

14 Plaintiff,

15 v.

16 DAVID D. McDONALD, DONNA K.
17 McDONALD, NATIONAL EXPERT
18 WITNESS NETWORK, a California Limited
19 Liability Company, and DOES 1-10, inclusive,

20 Defendants.

21 DAVID D. McDONALD; DONNA K.
22 McDONALD; NATIONAL EXPERT
23 WITNESS NETWORK, a California Limited
24 Liability Company; TECHNOLOGY CLE, a
25 California Limited Liability Company,

26 Cross-Complainants,

27 v.

28 JENNIFER OSBELT, individually and doing
business as PALO ALTO TECHNICAL, and
ROES 1-10, inclusive,

Cross-Defendants.

CASE NO. CIV 463528

**PLAINTIFF'S SEPARATE
STATEMENT OF DISPUTED
DOCUMENT REQUESTS AND
RESPONSES IN SUPPORT OF THE
MOTION TO COMPEL
PRODUCTION AND FOR
SANCTIONS**

Date: January 15, 2008
Time: 9:00 a.m.
Dept: LM

Trial: May 12, 2008

**PLAINTIFF'S SEPARATE STATEMENT OF DISPUTED DOCUMENT REQUESTS AND RESPONSES
IN SUPPORT OF THE MOTION TO COMPEL PRODUCTION AND FOR SANCTIONS**

INTRODUCTION

Pursuant to Rule 3.1020 of the California Rules of Court, Plaintiff Jennifer Osbelt ("Plaintiff") hereby submits the following Separate Statement of Disputed Document Requests and Responses in support of Plaintiff's Motion to Compel Production and For Sanctions against Defendants David and Donna McDonald ("Defendants"). Plaintiff initially propounded requests for production of documents on Defendants on August 1, 2007. Plaintiff incorporated those requests into the documents requested to be produced at the depositions of Defendants. As the document requests and responses by David and Donna McDonald were identical, Plaintiff has set forth just one set of the requests and responses but moves to compel and for sanctions against both Defendants.

REQUESTED DOCUMENTS

REQUEST FOR PRODUCTION NO. 11:

All DOCUMENTS relating to NEWN's tax returns and records for the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

Defendant objects to this request on the grounds that this request violates the taxpayer privilege. Defendant will not produce documents responsive to this request.

REASON WHY A FURTHER RESPONSE SHOULD BE COMPELLED:

Defendants have refused to produce tax records claiming that the requests "violates the taxpayer privilege." Defendants cannot assert the taxpayer privilege against Plaintiff, a member of the limited liability companies and thereby one of the taxpayers herself. The privilege does not apply to her and she is entitled to that information just as much as Defendants. Belatedly, Defendants have produced tax records for NEWN for 2004 through 2006. But Defendants still have not produced tax records for the full five years prior to the request nor have they produced any tax records or information for TCLE.

REQUEST FOR PRODUCTION NO. 12:

All DOCUMENTS relating to TCLE's tax returns and records for the last five years.

///

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

Defendant objects to this request on the grounds that this request violates the taxpayer privilege. Defendant will not produce documents responsive to this request.

REASON WHY A FURTHER RESPONSE SHOULD BE COMPELLED:

Defendants have refused to produce tax records claiming that the requests "violates the taxpayer privilege." Defendants cannot assert the taxpayer privilege against Plaintiff, a member of the limited liability companies and thereby one of the taxpayers herself. The privilege does not apply to her and she is entitled to that information just as much as Defendants. Belatedly, Defendants have produced tax records for NEWN for 2004 through 2006. But Defendants still have not produced tax records for the full five years prior to the request nor have they produced any tax records or information for TCLE.

REQUEST FOR PRODUCTION NO. 15:

All DOCUMENTS relating to NEWN's books and records for the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

Defendant objects to this request on the grounds that documents responsive to this request have already been produced to Plaintiffs. Defendant further objects to this request on the grounds that the request is overbroad, burdensome and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents not previously produced to Plaintiff within Defendant's possession, custody and control.

REASON WHY A FURTHER RESPONSE SHOULD BE COMPELLED:

Defendants responded in part that they would "produce documents not previously produced to Plaintiff," but also objected that such a request is "not reasonably calculated to lead to the discoverable information." To begin with, the scope of discovery is defined to include all information and documents "reasonably calculated to lead to the discovery of admissible evidence" not "reasonably calculated to lead to the discoverable information" as stated by Defendants. Regardless, as this information is directly relevant to the allegations and claims in the complaint, it is within the scope of discovery.

1 Additionally, contrary to their suggestion, Defendants never previously produced
2 documents. Their first production of documents in this case did not occur until after they served
3 their response to the document requests. Further, as indicated in great detail in both the Original
4 Complaint as well as the First Amended Complaint, Defendants never provided such documents
5 prior to the commencement of litigation despite Plaintiff's and her counsel's repeated efforts to
6 obtain the information. See generally, Original Complaint ¶¶ 32-43, 7:25-10-7.

7 Plaintiff is unaware of any books and records which have been produced to date. So far,
8 Defendants have only provided financial summaries created by or on behalf of themselves,
9 refusing to provide source documents establishing the income received and expenses incurred.
10 Defendants have insisted, without basis, that Plaintiff is only entitled to the financial summaries
11 which they, themselves, have created. But Plaintiff, under the Beverly-Killea Limited Liability
12 Company Act, terms of the Operating Agreement and the Code of Civil Procedure, is entitled to
13 an accounting, including the actual income and expense information, and not merely some
14 summary thereof. This information goes to the core of this case and is necessary to prove
15 Plaintiff's claims and damages. Defendants failure to provide the information is dilatory and
16 without merit.

17 **REQUEST FOR PRODUCTION NO. 16:**

18 All DOCUMENTS concerning or relating to any bank statements or account summaries
19 of NEWN for the last five years.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

21 Defendant objects to this request on the grounds that documents responsive to this request
22 have already been produced to Plaintiffs. Defendant further objects to this request on the
23 grounds that the request is overbroad, burdensome and not reasonably calculated to lead to
24 discoverable information. Subject to and without waiving the foregoing objection, Defendant
25 will produce documents not previously produced to Plaintiff within Defendant's possession,
26 custody and control.

27
28 **///**

REASON WHY A FURTHER RESPONSE SHOULD BE COMPELLED:

Contrary to their suggestion, Defendants never previously produced documents. Their first production of documents in this case did not occur until after they served their response to the document requests. Further, as indicated in great detail in both the Original Complaint as well as the First Amended Complaint, Defendants never provided such documents prior to the commencement of litigation despite Plaintiff's and her counsel's repeated efforts to obtain the information. See generally, Original Complaint ¶¶ 32-43, 7:25-10-7.

This information is relevant to establish, *inter alia*, the validity of any loans which Defendants have purportedly made to NEWN as well as any payments that NEWN and TCLE have made to them. To the extent that Defendants have produced bank statements, they contain gaps which omit material information related to the loans and payments received by Defendants. For instance, Defendants omitted bank statements from December 2002 through August 2003, from October 2003 through December 2003, and from May of this year to the time of production. This information is relevant to Plaintiff's breach of fiduciary duty claims, accounting claims as well as her more recently filed corporate waste, conversion and unjust enrichment claims. Defendants' failure to produce these documents is without cause.

REQUEST FOR PRODUCTION NO. 17:

All DOCUMENTS concerning or relating to any bank statements or account summaries of TCLE for the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

Defendant objects to this request on the grounds that documents responsive to this request have already been produced to Plaintiffs. Defendant further objects to this request on the grounds that the request is overbroad, burdensome and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents not previously produced to Plaintiff within Defendant's possession, custody and control.

///

REASON WHY A FURTHER RESPONSE SHOULD BE COMPELLED:

Contrary to their suggestion, Defendants never previously produced documents. Their first production of documents in this case did not occur until after they served their response to the document requests. Further, as indicated in great detail in both the Original Complaint as well as the First Amended Complaint, Defendants never provided such documents prior to the commencement of litigation despite Plaintiff's and her counsel's repeated efforts to obtain the information. See generally, Original Complaint ¶¶ 32-43, 7:25-10-7.

This information is relevant to establish, *inter alia*, the validity of any loans which Defendants have purportedly made to NEWN as well as any payments that NEWN and TCLE have made to them. To the extent that Defendants have produced bank statements, they contain gaps which omit material information related to the loans and payments received by Defendants. For instance, Defendants omitted bank statements from December 2002 through August 2003, from October 2003 through December 2003, and from May of this year to the time of production. This information is relevant to Plaintiff's breach of fiduciary duty claims, accounting claims as well as her more recently filed corporate waste, conversion and unjust enrichment claims. Defendants' failure to produce these documents is without cause.

REQUEST FOR PRODUCTION NO. 19:

All DOCUMENTS relating to expense claims submitted to NEWN by David D. McDonald for reimbursement for the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

Defendant objects to this request on the grounds that the request is overbroad, burdensome and not reasonably calculated to lead to discoverable information as this request does not relate to the allegations contained in the Complaint or Cross-Complaint. Defendant will not produce documents responsive to this request.

REASON WHY A FURTHER RESPONSE SHOULD BE COMPELLED:

Defendants have refused to produce any responsive documents, claiming that the request is "not reasonably calculated to lead to discoverable information as this request does not related to the allegations contained in the Complaint or Cross-Complaint." Nothing could be farther

1 from the truth. The Original Complaint sets forth causes of action against Defendants for breach
 2 of fiduciary duty, accounting violations and violations the Beverly-Killea Limited Liability
 3 Company Act, all of which place at issue payments received by Defendants. Additionally, the
 4 complaint had specifically alleged, *inter alia*, that the McDonalds had falsified financial
 5 statements and that an accurate accounting was necessary to determine the value of Plaintiff's
 6 interest in NEWN. Original Complaint at ¶¶ 2, 61-77, 2:10-12, 13:4-18. All of the foregoing,
 7 placed the validity of payments received by Defendants at issue.

8 **REQUEST FOR PRODUCTION NO. 20:**

9 All DOCUMENTS relating to expense claims submitted to NEWN by Donna K.
 10 McDonald for reimbursement for the last five years.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

12 Defendant objects to this request on the grounds that the request is overbroad,
 13 burdensome and not reasonably calculated to lead to discoverable information as this request
 14 does not relate to the allegations contained in the Complaint or Cross-Complaint. Defendant will
 15 not produce documents responsive to this request.

16 **REASON WHY A FURTHER RESPONSE SHOULD BE COMPELLED:**

17 Defendants have refused to produce any responsive documents, claiming that the request
 18 is "not reasonably calculated to lead to discoverable information as this request does not related
 19 to the allegations contained in the Complaint or Cross-Complaint." Nothing could be farther
 20 from the truth. The Original Complaint sets forth causes of action against Defendants for breach
 21 of fiduciary duty, accounting violations and violations the Beverly-Killea Limited Liability
 22 Company Act, all of which place at issue payments received by Defendants. Additionally, the
 23 complaint had specifically alleged, *inter alia*, that the McDonalds had falsified financial
 24 statements and that an accurate accounting was necessary to determine the value of Plaintiff's
 25 interest in NEWN. Original Complaint at ¶¶ 2, 61-77, 2:10-12, 13:4-18. All of the foregoing,
 26 placed the validity of payments received by Defendants at issue.

27
 28 ///

REQUEST FOR PRODUCTION NO. 22:

All DOCUMENTS relating to expense claims submitted to TCLE by David D. McDonald for reimbursement for the last three years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22:

Defendant objects to this request on the grounds that the request is overbroad, burdensome and not reasonably calculated to lead to discoverable information as this request does not relate to the allegations contained in the Complaint or Cross-Complaint. Defendant will not produce documents responsive to this request.

REASON WHY A FURTHER RESPONSE SHOULD BE COMPELLED:

Defendants have refused to produce any responsive documents, claiming that the request is "not reasonably calculated to lead to discoverable information as this request does not related to the allegations contained in the Complaint or Cross-Complaint." Nothing could be farther from the truth. The Original Complaint sets forth causes of action against Defendants for breach of fiduciary duty, accounting violations and violations the Beverly-Killea Limited Liability Company Act, all of which place at issue payments received by Defendants. Additionally, the complaint had specifically alleged, *inter alia*, that the McDonalds had falsified financial statements and that an accurate accounting was necessary to determine the value of Plaintiff's interest in NEWN. Original Complaint at ¶¶ 2, 61-77, 2:10-12, 13:4-18. All of the foregoing, placed the validity of payments received by Defendants at issue.

REQUEST FOR PRODUCTION NO. 23:

All DOCUMENTS relating to expense claims submitted to TCLE by Donna K. McDonald for reimbursement for the last three years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

Defendant objects to this request on the grounds that the request is overbroad, burdensome and not reasonably calculated to lead to discoverable information as this request does not relate to the allegations contained in the Complaint or Cross-Complaint. Defendant will not produce documents responsive to this request.

///

REASON WHY A FURTHER RESPONSE SHOULD BE COMPELLED:

Defendants have refused to produce any responsive documents, claiming that the request is "not reasonably calculated to lead to discoverable information as this request does not related to the allegations contained in the Complaint or Cross-Complaint." Nothing could be farther from the truth. The Original Complaint sets forth causes of action against Defendants for breach of fiduciary duty, accounting violations and violations the Beverly-Killea Limited Liability Company Act, all of which place at issue payments received by Defendants. Additionally, the complaint had specifically alleged, *inter alia*, that the McDonalds had falsified financial statements and that an accurate accounting was necessary to determine the value of Plaintiff's interest in NEWN. Original Complaint at ¶¶ 2, 61-77, 2:10-12, 13:4-18. All of the foregoing, placed the validity of payments received by Defendants at issue.

REQUEST FOR PRODUCTION NO. 24:

All DOCUMENTS relating to expenses charged to the NEWN company credit card by PLAINTIFF or any other person over the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 24:

Defendant objects to this request on the grounds that the request is overbroad, burdensome and not reasonably calculated to lead to discoverable information as this request does not relate to the allegations contained in the Complaint or Cross-Complaint. Defendant will not produce documents responsive to this request.

REASON WHY A FURTHER RESPONSE SHOULD BE COMPELLED:

Defendants have alleged in their Cross-Complaint that Plaintiff submitted false and duplicative expense reimbursement requests and thereby have asserted causes of action for fraud and breach of fiduciary duty against Plaintiff. See Cross-Complaint, Second and Third Causes of Action. These claims necessarily require an understanding of expenses charged to NEWN by Plaintiff. Additionally, the Original Complaint sets forth causes of action against Defendants for breach of fiduciary duty, accounting violations and violations the Beverly-Killea Limited Liability Company Act, all of which place at issue payments received by Defendants. Based on testimony adduced at the deposition of Defendants, it appears that they misappropriated company

assets for personal expenses. Thus, documents relating to expenses charged to the NEWN credit card, whether by Plaintiff, Defendants or any other person, are relevant the Cross-Complaint, Original and Amended Complaints as they directly relate to the claims and cross-claims in this action.

REQUEST FOR PRODUCTION NO. 25:

All DOCUMENTS relating to any payments made by NEWN to PLAINTIFF in the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 25:

Defendant will not produce documents responsive to this request.

REASON WHY A FURTHER RESPONSE SHOULD BE COMPELLED:

Defendants have refused to produce any responsive documents without even stating an objection or providing any grounds for their refusal. As such, any objections are waived and all responsive documents must be produced. *Stadish v. Sup. Ct.* (1999) 71 Cal.App.4th 1130, 1141. Additionally, Defendants alleged in their Cross-Complaint that Plaintiff submitted false and duplicative expense reimbursement requests and thereby have asserted causes of action for fraud and breach of fiduciary duty against Plaintiff. See Cross-Complaint, Second and Third Causes of Action. These claims necessarily require an understanding of expenses paid by NEWN to Plaintiff. Information concerning payments to Plaintiff are also necessary for accounting purposes and determining the value of her capital account. Thus, these documents are directly related to the claims and cross-claims in this action.

REQUEST FOR PRODUCTION NO. 26:

All DOCUMENTS relating to any payments made by NEWN to David D. McDonald in the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 26:

Defendant objects to this request on the grounds that the request is overbroad, burdensome and not reasonably calculated to lead to discoverable information as this request does not relate to the allegations contained in the Complaint or Cross-Complaint. Defendant will not produce documents responsive to this request.

REASON WHY A FURTHER RESPONSE SHOULD BE COMPELLED:

Defendants have refused to produce any responsive documents, claiming that the request is "not reasonably calculated to lead to discoverable information as this request does not related to the allegations contained in the Complaint or Cross-Complaint." Nothing could be farther from the truth. The Original Complaint sets forth causes of action against Defendants for breach of fiduciary duty, accounting violations and violations the Beverly-Killea Limited Liability Company Act, all of which place at issue payments received by Defendants. Additionally, the complaint had specifically alleged, *inter alia*, that the McDonalds had falsified financial statements and that an accurate accounting was necessary to determine the value of Plaintiff's interest in NEWN. Original Complaint at ¶¶ 2, 61-77, 2:10-12, 13:4-18. All of the foregoing has placed the validity of payments received by Defendants at issue.

REQUEST FOR PRODUCTION NO. 27:

All DOCUMENTS relating to any payments made by NEWN to Donna K. McDonald in the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 27:

Defendant objects to this request on the grounds that the request is overbroad, burdensome and not reasonably calculated to lead to discoverable information as this request does not relate to the allegations contained in the Complaint or Cross-Complaint. Defendant will not produce documents responsive to this request.

REASON WHY A FURTHER RESPONSE SHOULD BE COMPELLED:

Defendants have refused to produce any responsive documents, claiming that the request is "not reasonably calculated to lead to discoverable information as this request does not related to the allegations contained in the Complaint or Cross-Complaint." Nothing could be farther from the truth. The Original Complaint sets forth causes of action against Defendants for breach of fiduciary duty, accounting violations and violations the Beverly-Killea Limited Liability Company Act, all of which place at issue payments received by Defendants. Additionally, the complaint had specifically alleged, *inter alia*, that the McDonalds had falsified financial statements and that an accurate accounting was necessary to determine the value of Plaintiff's

1 interest in NEWN. Original Complaint at ¶¶ 2, 61-77, 2:10-12, 13:4-18. All of the foregoing has
2 placed the validity of payments received by Defendants at issue.

3 **REQUEST FOR PRODUCTION NO. 28:**

4 All DOCUMENTS relating to any payments made by TCLE to PLAINTIFF in the last
5 three years.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

7 Defendant will produce documents responsive to this request within Defendant's
8 possession, custody or control.

9 **REASON WHY A FURTHER RESPONSE SHOULD BE COMPELLED:**

10 Defendants have refused to produce any responsive documents, claiming that the request
11 is "not reasonably calculated to lead to discoverable information as this request does not related
12 to the allegations contained in the Complaint or Cross-Complaint." Nothing could be farther
13 from the truth. The Original Complaint sets forth causes of action against Defendants for breach
14 of fiduciary duty, accounting violations and violations the Beverly-Killea Limited Liability
15 Company Act, all of which place at issue payments received by Defendants. Additionally, the
16 complaint had specifically alleged, *inter alia*, that the McDonalds had falsified financial
17 statements and that an accurate accounting was necessary to determine the value of Plaintiff's
18 interest in NEWN. Original Complaint at ¶¶ 2, 61-77, 2:10-12, 13:4-18. All of the foregoing has
19 placed the validity of payments received by Defendants at issue.

20 **REQUEST FOR PRODUCTION NO. 29:**

21 All DOCUMENTS relating to any payments made by TCLE to David D. McDonald in
22 the last three years.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

24 Defendant objects to this request on the grounds that the request is overbroad,
25 burdensome and not reasonably calculated to lead to discoverable information as this request
26 does not relate to the allegations contained in the Complaint or Cross-Complaint. Defendant will
27 not produce documents responsive to this request.

28 ///

REASON WHY A FURTHER RESPONSE SHOULD BE COMPELLED:

Defendants have refused to produce any responsive documents, claiming that the request is "not reasonably calculated to lead to discoverable information as this request does not related to the allegations contained in the Complaint or Cross-Complaint." Nothing could be farther from the truth. The Original Complaint sets forth causes of action against Defendants for breach of fiduciary duty, accounting violations and violations the Beverly-Killea Limited Liability Company Act, all of which place at issue payments received by Defendants. Additionally, the complaint had specifically alleged, *inter alia*, that the McDonalds had falsified financial statements and that an accurate accounting was necessary to determine the value of Plaintiff's interest in NEWN. Original Complaint at ¶¶ 2, 61-77, 2:10-12, 13:4-18. All of the foregoing has placed the validity of payments received by Defendants at issue.

REQUEST FOR PRODUCTION NO. 30:

All DOCUMENTS relating to any payments made by TCLE to Donna K. McDonald in the last three years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 30:

Defendant objects to this request on the grounds that the request is overbroad, burdensome and not reasonably calculated to lead to discoverable information as this request does not relate to the allegations contained in the Complaint or Cross-Complaint. Defendant will not produce documents responsive to this request.

REASON WHY A FURTHER RESPONSE SHOULD BE COMPELLED:

Defendants have refused to produce any responsive documents, claiming that the request is "not reasonably calculated to lead to discoverable information as this request does not related to the allegations contained in the Complaint or Cross-Complaint." Nothing could be farther from the truth. The Original Complaint sets forth causes of action against Defendants for breach of fiduciary duty, accounting violations and violations the Beverly-Killea Limited Liability Company Act, all of which place at issue payments received by Defendants. Additionally, the complaint had specifically alleged, *inter alia*, that the McDonalds had falsified financial statements and that an accurate accounting was necessary to determine the value of Plaintiff's

1 interest in NEWN. Original Complaint at ¶¶ 2, 61-77, 2:10-12, 13:4-18. All of the foregoing has
 2 placed the validity of payments received by Defendants at issue.

3 **REQUEST FOR PRODUCTION NO. 36:**

4 All DOCUMENTS and recorded statements provided to NEWN's accountants over the
 5 last five years.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 36:**

7 Defendant objects to this request on the grounds that this request violates the taxpayer
 8 privilege. Defendant further objects to this request on the grounds that documents responsive to
 9 this request have already been produced to Plaintiffs. Subject to and without waiving the
 10 foregoing objection, Defendant will produce documents responsive to this request that have not
 11 been previously produced and that do not violate the taxpayer privilege.

12 **REASON WHY A FURTHER RESPONSE SHOULD BE COMPELLED:**

13 Defendants respond that they will produce all documents not previously produced that do
 14 not "violate the taxpayer privilege." To begin with, contrary to their suggestion, Defendants
 15 never previously produced documents. Their first production of documents in this case did not
 16 occur until after they served their response to the document requests. Further, as indicated in
 17 great detail in both the Original Complaint as well as the First Amended Complaint, Defendants
 18 never provided such documents prior to the commencement of litigation despite Plaintiff's and
 19 her counsel's repeated efforts to obtain the information. See generally, Original Complaint ¶¶
 20 32-43, 7:25-10-7. Further, Defendants cannot assert the taxpayer privilege against Plaintiff, a
 21 member of the limited liability companies and thereby one of the taxpayers herself. The
 22 privilege does not apply to her and she is entitled to that information just as much as Defendants.

23 So far, Defendants have only provided financial summaries created by or on behalf of
 24 themselves, refusing to provide source documents establishing the income received and expenses
 25 incurred. Defendants have insisted, without basis, that Plaintiff is only entitled to the financial
 26 summaries which they, themselves, have created. But Plaintiff, under the Beverly-Killea Limited
 27 Liability Company Act, terms of the Operating Agreement and the Code of Civil Procedure, is
 28 entitled to an accounting, including the actual income and expense information, and not merely

1 some summary thereof. This information goes to the core of this case and is necessary to prove
 2 Plaintiff's claims and damages. Defendants failure to provide the information is dilatory and
 3 without merit.

4 **REQUEST FOR PRODUCTION NO. 37:**

5 All DOCUMENTS and recorded statements provided to TCLE's accountants over the
 6 last three years.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 37:**

8 Defendant objects to this request on the grounds that this request violates the taxpayer
 9 privilege. Defendant further objects to this request on the grounds that documents responsive to
 10 this request have already been produced to Plaintiffs. Subject to and without waiving the
 11 foregoing objection, Defendant will produce documents responsive to this request that have not
 12 been previously produced and that do not violate the taxpayer privilege.

13 **REASON WHY A FURTHER RESPONSE SHOULD BE COMPELLED:**

14 Defendants respond that they will produce all documents not previously produced that do
 15 not "violate the taxpayer privilege." To begin with, contrary to their suggestion, Defendants
 16 never previously produced documents. Their first production of documents in this case did not
 17 occur until after they served their response to the document requests. Further, as indicated in
 18 great detail in both the Original Complaint as well as the First Amended Complaint, Defendants
 19 never provided such documents prior to the commencement of litigation despite Plaintiff's and
 20 her counsel's repeated efforts to obtain the information. See generally, Original Complaint ¶¶
 21 32-43, 7:25-10-7. Further, Defendants cannot assert the taxpayer privilege against Plaintiff, a
 22 member of the limited liability companies and thereby one of the taxpayers herself. The
 23 privilege does not apply to her and she is entitled to that information just as much as Defendants.

24 So far, Defendants have only provided financial summaries created by or on behalf of
 25 themselves, refusing to provide source documents establishing the income received and expenses
 26 incurred. Defendants have insisted, without basis, that Plaintiff is only entitled to the financial
 27 summaries which they, themselves, have created. But Plaintiff, under the Beverly-Killea Limited
 28 Liability Company Act, terms of the Operating Agreement, and the Code of Civil Procedure, is

entitled to an accounting, including the actual income and expense information, and not merely some summary thereof. This information goes to the core of this case and is necessary to prove Plaintiff's claims and damages. Defendants failure to provide the information is dilatory and without merit.

REQUEST FOR PRODUCTION NO. 43:

All DOCUMENTS relating to the governance of the TCLE.

RESPONSE TO REQUEST FOR PRODUCTION NO. 43:

Defendant objects to this request on the grounds that it is vague and ambiguous with regard to the undefined term "governance." Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control.

REASON WHY A FURTHER RESPONSE SHOULD BE COMPELLED:

Defendants agreed to provide responsive documents. But to date, Plaintiff has not received any documents relating to the governance of TCLE. Defendants have not produced the Operating Agreement, Articles of Organization, bylaws, or any other documents concerning TCLE's operation. These documents are relevant to establishing, *inter alia*, the obligations, if any, that the members had to each other relating to the filing and prosecution of patents for which Defendants have claimed damages in their Cross-Complaint.

REQUEST FOR PRODUCTION NO. 46:

All DOCUMENTS pertaining to PLAINTIFF's 401K plan with NEWN.

RESPONSE TO REQUEST FOR PRODUCTION NO. 46:

Defendant objects to this request on the grounds that it is vague, ambiguous, burdensome, overbroad, and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control that relate to the subject matter of the Complaint and Cross-Complaint.

///

REASON WHY A FURTHER RESPONSE SHOULD BE COMPELLED:

Defendants indicated that they would produce these documents. Nonetheless, other than some miscellaneous correspondence, Defendants have failed to produce documents related to the Plaintiff's 401k or Profit sharing plan. Without Plaintiff's consent, Defendants had diverted her share of the profits to these plans. Plaintiff has since been denied access to these funds. Thus, these documents are relevant for, *inter alia*, establishing part of the damages caused by Defendants. To date, Defendants have failed to produce any plan information, agreements or authorizations for these plans.

REQUEST FOR PRODUCTION NO. 47:

All DOCUMENTS pertaining to PLAINTIFF's 401K plan with TCLE.

RESPONSE TO REQUEST FOR PRODUCTION NO. 47:

Defendant objects to this request on the grounds that it is vague, ambiguous, burdensome, overbroad, and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control that relate to the subject matter of the Complaint and Cross-Complaint

REASON WHY A FURTHER RESPONSE SHOULD BE COMPELLED:

Defendants indicated that they would produce these documents. Nonetheless, other than some miscellaneous correspondence, Defendants have failed to produce documents related to the Plaintiff's 401k or Profit sharing plan. Without Plaintiff's consent, Defendants had diverted her share of the profits to these plans. Plaintiff has since been denied access to these funds. Thus, these documents are relevant for, *inter alia*, establishing part of the damages caused by Defendants. To date, Defendants have failed to produce any plan information, agreements or authorizations for these plans.

REQUEST FOR PRODUCTION NO. 48:

All DOCUMENTS pertaining to PLAINTIFF's Profit Sharing Plan with NEWN.

///

RESPONSE TO REQUEST FOR PRODUCTION NO. 48:

Defendant objects to this request on the grounds that it is vague, ambiguous, burdensome, overbroad, and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control that relate to the subject matter of the Complaint and Cross-Complaint.

REASON WHY A FURTHER RESPONSE SHOULD BE COMPELLED:

Defendants indicated that they would produce these documents. Nonetheless, other than some miscellaneous correspondence, Defendants have failed to produce documents related to the Plaintiff's 401k or Profit sharing plan. Without Plaintiff's consent, Defendants had diverted her share of the profits to these plans. Plaintiff has since been denied access to these funds. Thus, these documents are relevant for, *inter alia*, establishing part of the damages caused by Defendants. To date, Defendants have failed to produce any plan information, agreements or authorizations for these plans.

REQUEST FOR PRODUCTION NO. 49:

All DOCUMENTS pertaining to PLAINTIFF's Profit Sharing Plan with TCLE.

RESPONSE TO REQUEST FOR PRODUCTION NO. 49:

Defendant objects to this request on the grounds that it is vague, ambiguous, burdensome, overbroad, and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control that relate to the subject matter of the Complaint and Cross-Complaint.

REASON WHY A FURTHER RESPONSE SHOULD BE COMPELLED:

Defendants indicated that they would produce these documents. Nonetheless, other than some miscellaneous correspondence, Defendants have failed to produce documents related to the Plaintiff's 401k or Profit sharing plan. Without Plaintiff's consent, Defendants had diverted her share of the profits to these plans. Plaintiff has since been denied access to these funds. Thus, these documents are relevant for, *inter alia*, establishing part of the damages caused by

1 Defendants. To date, Defendants have failed to produce any plan information, agreements or
2 authorizations for these plans.

3 **REQUEST FOR PRODUCTION NO. 52:**

4 All DOCUMENTS relating to any payments made by NEWN for consulting services ins
5 the last five years.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 52:**

7 Defendant objects to this request on the grounds that it is vague, ambiguous, burdensome,
8 overbroad, and not reasonably calculated to lead to discoverable information. Subject to and
9 without waiving the foregoing objection, Defendant will produce documents responsive to this
10 request within Defendant's possession, custody and control that relate to the subject matter of the
11 Complaint and Cross-Complaint.

12 **REASON WHY A FURTHER RESPONSE SHOULD BE COMPELLED:**

13 Defendants responded that they would "produce documents responsive" to these requests.
14 Defendants recently produced summary payment information created by or on behalf of
15 themselves, but, once again, failed to provide copies of any of the source documents which
16 actually evidence details the payments made. Rather than provide bank statements, checks, or
17 money transfers, Defendants merely provided their own summaries of their invoices. This
18 information is highly relevant to, *inter alia*, Plaintiff's breach of fiduciary duty claims and
19 accounting claims. Plaintiff is entitled to the actual payment information and not merely
20 Defendant's representation thereof.

21 **REQUEST FOR PRODUCTION NO. 53:**

22 All DOCUMENTS relating to any payments made by TCLE for consulting services in the
23 last three years.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 53:**

25 Defendant objects to this request on the grounds that it is vague, ambiguous, burdensome,
26 overbroad, and not reasonably calculated to lead to discoverable information. Subject to and
27 without waiving the foregoing objection, Defendant will produce documents responsive to this
28

1 request within Defendant's possession, custody and control that relate to the subject matter of the
2 Complaint and Cross-Complaint.

3 **REASON WHY A FURTHER RESPONSE SHOULD BE COMPELLED:**

4 Defendants responded that they would "produce documents responsive" to these requests.
5 Defendants recently produced summary payment information created by or on behalf of
6 themselves, but, once again, failed to provide copies of any of the source documents which
7 actually evidence details the payments made. Rather than provide bank statements, checks, or
8 money transfers, Defendants merely provided their own summaries of their invoices. This
9 information is highly relevant to, *inter alia*, Plaintiff's breach of fiduciary duty claims and
10 accounting claims. Plaintiff is entitled to the actual payment information and not merely
11 Defendant's representation thereof.

12
13 Dated: December 16, 2007

COTCHETT, PITRE & McCARTHY

14
15 By 

SEAN E. PONIST
Attorneys for Plaintiff

1 *Jennifer Osbelt, v. David D. McDonald, Donna K. McDonald, et al.*
 2 *San Mateo Superior Court CIV 463528*

3 **PROOF OF SERVICE**

4 I am employed in San Mateo County, which is where service of the document(s) referred to
 5 below occurred. I am over the age of 18 and not a party to the within action. My business address is
 6 Cotchett, Pitre & McCarthy, San Francisco Airport Center, 840 Malcolm Road, Suite 200, Burlingame,
 7 California 94010. I am readily familiar with Cotchett, Pitre & McCarthy's practices for the service of
 8 documents. On this date, I served a true copy of the following document(s) in the manner listed below:

9 **PLAINTIFF'S SEPARATE STATEMENT OF DISPUTED DOCUMENT REQUESTS AND**
 10 **RESPONSES IN SUPPORT OF THE MOTION TO COMPEL PRODUCTION AND FOR**
 11 **SANCTIONS**

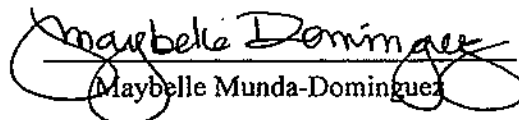
12 **BY MAIL:** I am readily familiar with this firm's practice for collection and processing of
 13 correspondence for mailing. Following that practice, I placed a true copy of the aforementioned
 14 document(s) in a sealed envelope, addressed to each addressee, respectively, as specified below.
 15 The envelope was placed in the mail at my business address, with postage thereon fully prepaid,
 16 for deposit with the United States Postal Service on that same day in the ordinary course of
 17 business.

18 **XXX BY HAND DELIVERY:** I am readily familiar with this firm's practice for causing documents to
 19 be served by hand delivery. Following that practice, I caused the sealed envelope containing the
 20 aforementioned document(s) to be hand delivered to the addressee(s) specified below.

21 William J. Goines
 22 Karen Rosenthal
 23 Cindy Hamilton
 24 **GREENBERG TRAURIG, LLP**
 25 1900 University Avenue, Fifth Floor
 26 East Palo Alto, CA 94303
 27 Tel.: (650) 328-8500
 28 Fax: (650) 328-8508

29 **BY OVERNIGHT COURIER SERVICE:** I am readily familiar with this firm's practice for
 30 causing documents to be served by overnight courier. Following that practice, I caused the
 31 sealed envelope containing the aforementioned document(s) to be delivered via overnight courier
 32 service to the addressee(s) specified below:

33 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is
 34 true and correct. Executed at Burlingame, California, on December 18, 2007.

35 
 36 Maybelle Munda-Dominguez

JOSEPH C. COTCHETT (#168009)
ARA R. JABAGCHOURIAN (#205777)
SEAN E. PONIST (#204712)
COTCHETT, PITRE & McCARTHY
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

JENNIFER OSBELT,

Plaintiff,

v.

DAVID D. McDONALD, DONNA K.
MCDONALD, NATIONAL EXPERT
WITNESS NETWORK, a California Limited
Liability Company, and DOES 1-10, inclusive,

Defendants.

CASE NO. CIV 463528

**DECLARATION OF SEAN E. PONIST
IN SUPPORT OF PLAINTIFF'S
MOTION TO COMPEL**

Date: January ¹⁵ 14, 2008
Time: 9:00 a.m.
Dept: LM

Trial: May 12, 2008

DAVID D. McDONALD; DONNA K.
McDONALD; NATIONAL EXPERT
WITNESS NETWORK, a California Limited
Liability Company; TECHNOLOGY CLE, a
California Limited Liability Company,

Cross-Complainants,

v.

JENNIFER OSBELT, individually and doing
business as PALO ALTO TECHNICAL, and
ROES 1-10, inclusive,

Cross-Defendants.

1 I, SEAN PONIST, declare as follows:

2 1. I am an attorney duly licensed and admitted to practice before all courts in the
3 State of California, and am associated with the law firm of Cotchett, Pitre & McCarthy, counsel
4 for Plaintiff Jennifer Osbelt ("Plaintiff") in this action.

5 2. On August 1, 2007, Plaintiff served her first set of document requests on
6 Defendants David and Donna McDonald ("Defendants"). These document requests were
7 substantially similar to the document requests served in connection with the second amended
8 deposition notices of Defendants, upon which Plaintiff brings this motion to compel.

9 3. On August 2, 2007, Plaintiff served a deposition notice and request for production
10 of documents on David and Donna McDonald. These document requests were substantially
11 similar to the document requests served in connection with the second amended deposition
12 notices of Defendants, upon which Plaintiff brings this motion to compel.

13 4. On September 13, 2007, Plaintiff served an amended notice of deposition and
14 request for production of documents upon David and Donna McDonald. These document
15 requests were substantially similar to the document requests served in connection with the second
16 amended deposition notices of Defendants, upon which Plaintiff brings this motion to compel.

17 5. On September 25, 2007, Plaintiff served a second amended notice of Defendants'
18 depositions and request for production of documents.

19 6. Attached hereto as Exhibit A is a true and correct copy of David McDonald's
20 Second Amended Notice of Deposition and Request for Production of Documents. Attached
21 hereto as Exhibit B is a true and correct copy of Donna McDonald's Second Amended Notice of
22 Deposition and Request for Production of Documents.

23 7. Attached hereto as Exhibit C is a true and correct copy Defendant David
24 McDonald's Objection to Second Amended Notice of Deposition and Request for Production of
25 Documents served on October 9, 2007.

26 8. Attached hereto as Exhibit D is a true and correct copy Defendant Donna
27 McDonald's Objection to Second Amended Notice of Deposition and Request for Production of
28 Documents served on October 9, 2007.

1 9. On October 10, 2007, Defendants first produced documents in this litigation. The
2 production did not include many documents responsive to Plaintiff's prior document requests.

3 10. Attached hereto as Exhibit E is a true and correct copy of a meet and confer letter
4 dated October 15, 2007 from Plaintiff's Counsel to Defendants' counsel.

5 11. On or about October 26, 2007, Defendants produced additional responsive
6 documents, but still had failed to produce many material, responsive documents.

7 12. At the depositions of Defendants David and Donna McDonald taken October 17,
8 2007 and October 18, 2007, respectively, no additional documents were produced. Defendants'
9 counsel agreed at the deposition to produce additional documents previously withheld from
10 production. Attached hereto as Exhibit F is a true and correct copy of a meet and confer letter
11 dated November 3, 2007 from Plaintiff's Counsel confirming that agreement.

12 13. Attached hereto as Exhibit G is a true and correct copy of a meet and confer letter
13 dated November 3, 2007 from Plaintiff's Counsel, requesting deposition dates and again
14 requesting documents.

15 14. Attached hereto as Exhibit H is a true and correct copy of a meet and confer letter
16 dated November 9, 2007 from Defendants' counsel in response to Plaintiff's counsel's meet and
17 confer letters and document requests.

18 15. On December 13, 2007, Plaintiff received additional documents from Defendants,
19 but Defendants still had failed to produce many other responsive documents.

20 16. In addition to the written correspondence noted above, Plaintiff's counsel has had
21 multiple meet and confer conversations with Defendants' counsel regarding Defendants'
22 document production.

23 17. Prior to filing this motion, Plaintiff's counsel has made a reasonable and good
24 faith effort to resolve informally the issues presented by this motion.

25 18. My standard hourly rate is \$250.00 an hour. I have spent eight hours researching
26 and preparing the motion to compel and supporting papers and anticipate spending an additional
27 three hours drafting a reply brief and arguing this motion.
28

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct. Executed this 18th day of December, 2007 at Burlingame,
3 California.

4 
5 SEAN PONIST
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Jennifer Osbelt, v. David D. McDonald, Donna K. McDonald, et al.
 San Mateo Superior Court CIV 463528

PROOF OF SERVICE

I am employed in San Mateo County, which is where service of the document(s) referred to below occurred. I am over the age of 18 and not a party to the within action. My business address is Cotchett, Pitre & McCarthy, San Francisco Airport Center, 840 Malcolm Road, Suite 200, Burlingame, California 94010. I am readily familiar with Cotchett, Pitre & McCarthy's practices for the service of documents. On this date, I served a true copy of the following document(s) in the manner listed below:

DECLARATION OF SEAN E. PONIST IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL

BY MAIL: I am readily familiar with this firm's practice for collection and processing of correspondence for mailing. Following that practice, I placed a true copy of the aforementioned document(s) in a sealed envelope, addressed to each addressee, respectively, as specified below. The envelope was placed in the mail at my business address, with postage thereon fully prepaid, for deposit with the United States Postal Service on that same day in the ordinary course of business.

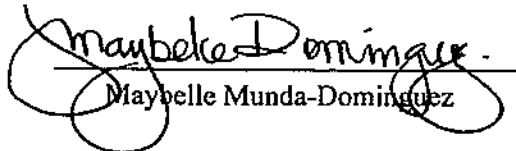
XXX BY HAND DELIVERY: I am readily familiar with this firm's practice for causing documents to be served by hand delivery. Following that practice, I caused the sealed envelope containing the aforementioned document(s) to be hand delivered to the addressee(s) specified below.

William J. Goines
 Karen Rosenthal
 Cindy Hamilton

GREENBERG TRAURIG, LLP
 1900 University Avenue, Fifth Floor
 East Palo Alto, CA 94303
 Tel.: (650) 328-8500
 Fax: (650) 328-8508

BY OVERNIGHT COURIER SERVICE: I am readily familiar with this firm's practice for causing documents to be served by overnight courier. Following that practice, I caused the sealed envelope containing the aforementioned document(s) to be delivered via overnight courier service to the addressee(s) specified below:

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Burlingame, California, on December 18, 2007.


 Maybelle Munda-Dominguez

1 JOSEPH W. COTCHETT (36324)
2 jcotchett@cpmlegal.com
3 ARA JABAGCHOURIAN (205777)
4 ajabagchourian@cpmlegal.com
5 SEAN E. PONIST (204712)
6 sponist@cpmlegal.com
7 **COTCHETT, PITRE & McCARTHY**
8 San Francisco Airport Office Center
9 840 Malcolm Road, Suite 200
10 Burlingame, CA 94010
11 Telephone: (650) 697-6000
12 Facsimile: (650) 697-0577

13 *Attorneys for Plaintiff*

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF SAN MATEO**

16 **JENNIFER OSBELT,**

17 **Plaintiff,**

18 **v.**

19 **DAVID D. McDONALD,**
20 **DONNA K. McDONALD, and**
21 **DOES 1 THROUGH 10, inclusive,**

22 **Defendants.**

23 **Case No. CIV 463528**

24 **PLAINTIFFS' SECOND AMENDED**
25 **NOTICE OF DEPOSITION OF DAVID**
26 **McDONALD**

27 **NOTICE THAT DEPOSITIONS**
28 **MAY BE VIDEOTAPED**

Date: October 17, 2007
Time: 9:00 a.m.
Location: Cotchett, Pitre & McCarthy
840 Malcolm Road, Suite 200
Burlingame, CA 94010

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that, pursuant to Code of Civil Procedure section 2025.010 *et*
3 *seq.*, Plaintiff will take the deposition of **DAVID MCDONALD** on **October 17, 2007, at 9:00**
4 **a.m.**, at Cotchett, Pitre & McCarthy, 840 Malcolm Road, Suite 200, Burlingame, CA 94010,
5 (650) 697-6000. The deposition will be taken upon oral examination before a notary public, and
6 will continue from day to day thereafter, Sundays and holidays excluded, until completed.

7 PLEASE TAKE FURTHER NOTICE that Plaintiff reserves the right to record the
8 deposition testimony of the above-identified deponents by videotape and instant visual display, in
9 addition to recording the testimony by stenographic method, pursuant to Code of Civil Procedure
10 sections 2025.310 *et seq.* Plaintiffs reserve the right to use the videotape depositions at time of
11 trial.

12 PLEASE TAKE FURTHER NOTICE that the deponent is requested to produce the
13 documents and writings described in Exhibit A attached hereto at a time that is mutually
14 convenient for the parties but no later than the date of deposition.

15
16 DATED: September 25, 2007

COTCHETT, PITRE & McCARTHY

17
18 By: 

19 SEAN E. PONIST
20 Attorney for Plaintiffs
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EXHIBIT A

INSTRUCTIONS

The words used in these requests are to be interpreted according to their plain meanings. The following definitions and instructions are provided in the spirit of good faith and cooperation to assist the deponent in preparing responses to each of the requests for inspection and production of documents hereinafter set forth. As used herein:

1. "DOCUMENT" means any and all drafts, originals and non-conforming copies, including those containing handwritten notes or comments, within the custody, possession, or control of the deponent, defendant's attorneys, representatives or agents. "DOCUMENT" includes manuals, statements of account, correspondence, records of conferences, memoranda, handwritten notes, typewritten notes, journal entries, diary entries, desk calendars, agendas, schedules, reports, financial calculations, contracts, interviews, speeches, transcripts, depositions, trial exhibits, press releases, affidavits, communications with government bodies or agencies, notes and minutes of meetings of boards of directors, audit committees, financial committees and executive committees, interoffice communications, computer data, electronic mail, maps, blueprints, photographs, negatives, films, slides, videotapes, audio tapes, data sheets, records, specifications, profiles, manifests, submissions, directives, permits, forms, invoices, standards, objectives, procedures, and summaries.

2. In producing the DOCUMENTS and things, the deponent shall furnish all DOCUMENTS in the possession, custody or control of defendant's agents and/or representatives, including defendant's attorneys and corporate affiliates.

3. If any requested DOCUMENT or thing cannot be produced in full, it shall be produced to the extent possible, indicating what DOCUMENTS or portion of DOCUMENTS are being withheld and the reasons why such DOCUMENTS are being withheld.

4. If any privilege is claimed to be applicable to any DOCUMENT the production of which is sought by this request, with respect to that DOCUMENT:

- a. State the date(s) the DOCUMENT was created, sent and received;
- b. Identify each and every author of the DOCUMENT;

- c. Identify each and every other person who prepared and participated in the production of the DOCUMENT;
- d. Identify each and every person who received the DOCUMENT;
- e. Identify each and every person from whom the DOCUMENT was received;
- f. State a description of the DOCUMENT sufficient to identify it without revealing the information for which the privilege is claimed;
- g. State the present location of the DOCUMENT and all copies thereof;
- h. Identify each and every person having custody or control of the DOCUMENT and all copies thereof;
- i. Provide sufficient further information concerning the DOCUMENT to explain the claim of privilege and to permit the adjudication of the propriety of that claim.

5. Notwithstanding the assertion of any privilege or objection, any DOCUMENT which contains both privileged or objectionable and non-privileged or non-objectionable information which is responsive to this request must be produced with the privileged or objectionable information redacted from the DOCUMENT.

6. Copies of the file tab or label of the file in which a DOCUMENT called for by this request is found shall be produced along with the DOCUMENTS found in the file.

7. DOCUMENTS attached to each other should not be separated.

8. DOCUMENTS not otherwise called for by this request shall be produced if such DOCUMENTS refer to, relate to or explain the DOCUMENTS which are called for by this request or if such DOCUMENTS are attached to DOCUMENTS called for by this request and constitute routing slips, transmittal memoranda, letters, comments, evaluations of similar DOCUMENTS.

9. If the deponent is aware that a DOCUMENT or thing, or group of DOCUMENTS or things, once existed, but has been destroyed, the deponent is requested to state when the

DOCUMENT, group of DOCUMENTS, thing or group of things, was destroyed, why it was destroyed, and the circumstances under which it was destroyed.

10. "YOU" and "YOUR" means the deponent.

11. "PERSON" shall mean and refer to all individuals, corporations, associations, governmental agencies, or any other type of business or legal entity.

12. "PLAINTIFF" shall refer to Jennifer Osbelt who is the Plaintiff and Cross-Defendant in this litigation.

13. "NEWN" shall refer to the National Expert Witness Network, a California Limited Liability Company.

14. "TCLE" shall refer to the Technology CLE, a California Limited Liability Company.

REQUESTED DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

All DOCUMENTS concerning or relating to any note or loan obligations of NEWN.

REQUEST FOR PRODUCTION NO. 2:

All DOCUMENTS concerning or relating to any note or loan obligations of TCLE.

REQUEST FOR PRODUCTION NO. 3:

All DOCUMENTS concerning or relating to any notes or loans made by NEWN.

REQUEST FOR PRODUCTION NO. 4:

All DOCUMENTS concerning or relating to any notes or loans made by TCLE.

REQUEST FOR PRODUCTION NO. 5:

All DOCUMENTS relating to any communications or correspondence between YOU and PLAINTIFF within the last 12 months.

REQUEST FOR PRODUCTION NO. 6:

All DOCUMENTS reflecting any statement made by YOU in the last 12 months about or concerning PLAINTIFF.

///

///

1 **REQUEST FOR PRODUCTION NO. 7:**

2 All DOCUMENTS relating to YOUR offer to purchase PLAINTIFF's interest in NEWN
3 on or about March 26, 2007.

4 **REQUEST FOR PRODUCTION NO. 8:**

5 All DOCUMENTS relating to NEWN's offer to purchase PLAINTIFF's interest in
6 NEWN on or about March 26, 2007.

7 **REQUEST FOR PRODUCTION NO. 9:**

8 All DOCUMENTS relating to PLAINTIFF's acceptance of YOUR offer to purchase her
9 interest in NEWN on or about March 26, 2007.

10 **REQUEST FOR PRODUCTION NO. 10:**

11 All DOCUMENTS relating to PLAINTIFF's acceptance of NEWN's offer to purchase
12 her interest in NEWN on or about March 26, 2007.

13 **REQUEST FOR PRODUCTION NO. 11:**

14 All DOCUMENTS relating to NEWN'S tax returns and records for the last five years.

15 **REQUEST FOR PRODUCTION NO. 12:**

16 All DOCUMENTS relating to TCLE's tax returns and records for the last five years.

17 **REQUEST FOR PRODUCTION NO. 13:**

18 All DOCUMENTS relating to YOUR books and records for the last five years.

19 **REQUEST FOR PRODUCTION NO. 14:**

20 All DOCUMENTS relating to TCLE's books and records for the last five years.

21 **REQUEST FOR PRODUCTION NO. 15:**

22 All DOCUMENTS relating to NEWN's books and records for the last five years.

23 **REQUEST FOR PRODUCTION NO. 16:**

24 All DOCUMENTS concerning or relating to any bank statements or account summaries
25 of NEWN for the last five years.

26 **REQUEST FOR PRODUCTION NO. 17:**

27 All DOCUMENTS concerning or relating to any bank statements or account summaries
28 for TCLE for the last three years.

REQUEST FOR PRODUCTION NO. 18:

All DOCUMENTS relating to expense claims submitted to NEWN by PLAINTIFF for reimbursement for the last five years.

REQUEST FOR PRODUCTION NO. 19:

All DOCUMENTS relating to expense claims submitted to NEWN by David D. McDonald for reimbursement for the last five years.

REQUEST FOR PRODUCTION NO. 20:

All DOCUMENTS relating to expense claims submitted to NEWN by Donna K. McDonald for reimbursement for the last five years.

REQUEST FOR PRODUCTION NO. 21:

All DOCUMENTS relating to expense claims submitted to TCLE by PLAINTIFF for reimbursement for the last three years.

REQUEST FOR PRODUCTION NO. 22:

All DOCUMENTS relating to expense claims submitted to TCLE by David D. McDonald for reimbursement for the last three years.

REQUEST FOR PRODUCTION NO. 23:

All DOCUMENTS relating to expense claims submitted to TCLE by Donna K. McDonald for reimbursement for the last three years.

REQUEST FOR PRODUCTION NO. 24:

All DOCUMENTS relating to expenses charged to the NEWN company credit card by PLAINTIFF or any other person over the last five years.

REQUEST FOR PRODUCTION NO. 25:

All DOCUMENTS relating to any payments made by NEWN to PLAINTIFF in the last five years.

REQUEST FOR PRODUCTION NO. 26:

All DOCUMENTS relating to any payments made by NEWN to David D. McDonald in the last five years.

1 **REQUEST FOR PRODUCTION NO. 27:**

2 All DOCUMENTS relating to any payments made by NEWN to Donna K. McDonald in
3 the last five years.

4 **REQUEST FOR PRODUCTION NO. 28:**

5 All DOCUMENTS relating to any payments made by TCLE to PLAINTIFF in the last
6 three years.

7 **REQUEST FOR PRODUCTION NO. 29:**

8 All DOCUMENTS relating to any payments made by TCLE to David D. McDonald in
9 the last three years.

10 **REQUEST FOR PRODUCTION NO. 30:**

11 All DOCUMENTS relating to any payments made by TCLE to Donna K. McDonald in
12 the last three years.

13 **REQUEST FOR PRODUCTION NO. 31:**

14 All DOCUMENTS relating to YOUR allegations that PLAINTIFF made false and
15 duplicative reimbursement expense requests.

16 **REQUEST FOR PRODUCTION NO. 32:**

17 All DOCUMENTS relating to NEWN's patent applications pending with the USPTO.

18 **REQUEST FOR PRODUCTION NO. 33:**

19 All DOCUMENTS relating to TCLE's patent applications pending with the USPTO.

20 **REQUEST FOR PRODUCTION NO. 34:**

21 All DOCUMENTS reflecting the projected value of the patent as alleged in paragraph 23
22 of the Cross-Complaint.

23 **REQUEST FOR PRODUCTION NO. 35:**

24 All DOCUMENTS reflecting any expenses incurred as a result of the patent application
25 process.

26 **REQUEST FOR PRODUCTION NO. 36:**

27 All DOCUMENTS and recorded statements provided to NEWN's accountants over the
28 last five years.

1 **REQUEST FOR PRODUCTION NO. 37:**

2 All DOCUMENTS and recorded statements provided to TCLE's accountants over the
3 last three years.

4 **REQUEST FOR PRODUCTION NO. 38:**

5 All tax returns, tax schedules, and other related DOCUMENTS filed by or on behalf of
6 NEWN for the last five years.

7 **REQUEST FOR PRODUCTION NO. 39:**

8 All DOCUMENTS reflecting any amendments or modifications to the NEWN Operating
9 Agreement or Articles of Incorporation.

10 **REQUEST FOR PRODUCTION NO. 40:**

11 All DOCUMENTS relating to the governance of NEWN.

12 **REQUEST FOR PRODUCTION NO. 41:**

13 All DOCUMENTS concerning or relating to the business plans of NEWN for the last five
14 years.

15 **REQUEST FOR PRODUCTION NO. 42:**

16 All DOCUMENTS concerning or relating to the business plans of TCLE for the last five
17 years.

18 **REQUEST FOR PRODUCTION NO. 43:**

19 All DOCUMENTS relating to the governance of the TCLE.

20 **REQUEST FOR PRODUCTION NO. 44:**

21 All DOCUMENTS concerning or relating to any defamatory statements allegedly made
22 by PLAINTIFF'S about YOU, NEWN or TCLE.

23 **REQUEST FOR PRODUCTION NO. 45:**

24 All DOCUMENTS identified in response to special interrogatories 2, 6, 9, 11, 15, 17, 21,
25 24, 27, 30 and 33.

26 **REQUEST FOR PRODUCTION NO. 46:**

27 All DOCUMENTS pertaining to PLAINTIFF's 401K plan with NEWN.

1 **REQUEST FOR PRODUCTION NO. 47:**

2 All DOCUMENTS pertaining to PLAINTIFF's 401K plan with TCLE.

3 **REQUEST FOR PRODUCTION NO. 48:**

4 All DOCUMENTS pertaining to PLAINTIFF's Profit Sharing Plan with NEWN.

5 **REQUEST FOR PRODUCTION NO. 49:**

6 All DOCUMENTS pertaining to PLAINTIFF's Profit Sharing Plan with TCLE.

7 **REQUEST FOR PRODUCTION NO. 50:**

8 All DOCUMENTS relating to any consulting agreements or services provided to NEWN.

9 **REQUEST FOR PRODUCTION NO. 51:**

10 All DOCUMENTS relating to any consulting agreements or services provided to TCLE.

11 **REQUEST FOR PRODUCTION NO. 52:**

12 All DOCUMENTS relating to any payments made by NEWN for consulting services in
13 the last five years.

14 **REQUEST FOR PRODUCTION NO. 53:**

15 All DOCUMENTS relating to any payments made by TCLE for consulting services in
16 the last three years.

Jennifer Osbelt, v. David D. McDonald, Donna K. McDonald, et al.
San Mateo Superior Court CIV 463528

PROOF OF SERVICE

I am employed in San Mateo County, which is where service of the document(s) referred to below occurred. I am over the age of 18 and not a party to the within action. My business address is Cotchett, Pitre & McCarthy, San Francisco Airport Center, 840 Malcolm Road, Suite 200, Burlingame, California 94010. I am readily familiar with Cotchett, Pitre & McCarthy's practices for the service of documents. On this date, I served a true copy of the following document(s) in the manner listed below:

PLAINTIFF'S SECOND AMENDED NOTICE OF DEPOSITION OF DAVID MCDONALD

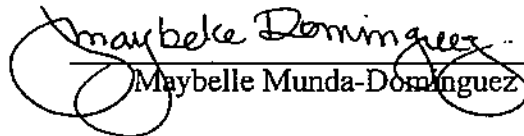
XXX BY MAIL: I am readily familiar with this firm's practice for collection and processing of correspondence for mailing. Following that practice, I placed a true copy of the aforementioned document(s) in a sealed envelope, addressed to each addressee, respectively, as specified below. The envelope was placed in the mail at my business address, with postage thereon fully prepaid, for deposit with the United States Postal Service on that same day in the ordinary course of business.

William J. Goines
 Karen Rosenthal
 Cindy Hamilton
GREENBERG TRAURIG, LLP
 1900 University Avenue, Fifth Floor
 East Palo Alto, CA 94303
 Tel.: (650) 328-8500
 Fax: (650) 328-8508

BY HAND DELIVERY: I am readily familiar with this firm's practice for causing documents to be served by hand delivery. Following that practice, I caused the sealed envelope containing the aforementioned document(s) to be hand delivered to the addressee(s) specified below.

BY OVERNIGHT COURIER SERVICE: I am readily familiar with this firm's practice for causing documents to be served by overnight courier. Following that practice, I caused the sealed envelope containing the aforementioned document(s) to be delivered via overnight courier service to the addressee(s) specified below:

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Burlingame, California, on September 25, 2007.


 Maybelle Munda-Dominguez

1 JOSEPH W. COTCHETT (36324)
2 jcotchett@cpmlegal.com
3 ARA JABAGCHOURIAN (205777)
4 ajabagchourian@cpmlegal.com
5 SEAN E. PONIST (204712)
6 sponist@cpmlegal.com
7 **COTCHETT, PITRE & MCCARTHY**
8 San Francisco Airport Office Center
9 840 Malcolm Road, Suite 200
10 Burlingame, CA 94010
11 Telephone: (650) 697-6000
12 Facsimile: (650) 697-0577

13 *Attorneys for Plaintiff*

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF SAN MATEO**

16 **JENNIFER OSBELT,**

17 **Plaintiff,**

18 **v.**

19 **DAVID D. McDONALD,**
20 **DONNA K. McDONALD, and**
21 **DOES 1 THROUGH 10, inclusive,**

22 **Defendants.**

23 **Case No. CIV 463528**

24 **PLAINTIFFS' SECOND AMENDED**
25 **NOTICE OF DEPOSITION OF DONNA**
26 **McDONALD**

27 **NOTICE THAT DEPOSITIONS**
28 **MAY BE VIDEOTAPED**

Date: October 18, 2007

Time: 10:00 a.m.

Location: Cotchett, Pitre & McCarthy
840 Malcolm Road, Suite 200
Burlingame, CA 94010

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that, pursuant to Code of Civil Procedure section 2025.010 *et*
3 *seq.*, Plaintiff will take the deposition of **DONNA MCDONALD** on **October 18, 2007, at 10:00**
4 **a.m.**, at Cotchett, Pitre & McCarthy, 840 Malcolm Road, Suite 200, Burlingame, CA 94010,
5 (650) 697-6000. The deposition will be taken upon oral examination before a notary public, and
6 will continue from day to day thereafter, Sundays and holidays excluded, until completed.

7 PLEASE TAKE FURTHER NOTICE that Plaintiff reserves the right to record the
8 deposition testimony of the above-identified deponents by videotape and instant visual display, in
9 addition to recording the testimony by stenographic method, pursuant to Code of Civil Procedure
10 sections 2025.310 *et seq.* Plaintiffs reserve the right to use the videotape depositions at time of
11 trial.

12 PLEASE TAKE FURTHER NOTICE that the deponent is requested to produce the
13 documents and writings described in Exhibit A attached hereto at a time that is mutually
14 convenient for the parties but no later than the date of deposition.

15
16 DATED: September 25, 2007

COTCHETT, PITRE & McCARTHY

17
18 By: 

19 SEAN E. PONIST
20 *Attorney for Plaintiffs*
21
22
23
24
25
26
27
28

EXHIBIT A

INSTRUCTIONS

The words used in these requests are to be interpreted according to their plain meanings. The following definitions and instructions are provided in the spirit of good faith and cooperation to assist the deponent in preparing responses to each of the requests for inspection and production of documents hereinafter set forth. As used herein:

1. "DOCUMENT" means any and all drafts, originals and non-conforming copies, including those containing handwritten notes or comments, within the custody, possession, or control of the deponent, defendant's attorneys, representatives or agents. "DOCUMENT" includes manuals, statements of account, correspondence, records of conferences, memoranda, handwritten notes, typewritten notes, journal entries, diary entries, desk calendars, agendas, schedules, reports, financial calculations, contracts, interviews, speeches, transcripts, depositions, trial exhibits, press releases, affidavits, communications with government bodies or agencies, notes and minutes of meetings of boards of directors, audit committees, financial committees and executive committees, interoffice communications, computer data, electronic mail, maps, blueprints, photographs, negatives, films, slides, videotapes, audio tapes, data sheets, records, specifications, profiles, manifests, submissions, directives, permits, forms, invoices, standards, objectives, procedures, and summaries.

2. In producing the DOCUMENTS and things, the deponent shall furnish all DOCUMENTS in the possession, custody or control of defendant's agents and/or representatives, including defendant's attorneys and corporate affiliates.

3. If any requested DOCUMENT or thing cannot be produced in full, it shall be produced to the extent possible, indicating what DOCUMENTS or portion of DOCUMENTS are being withheld and the reasons why such DOCUMENTS are being withheld.

4. If any privilege is claimed to be applicable to any DOCUMENT the production of which is sought by this request, with respect to that DOCUMENT:

- a. State the date(s) the DOCUMENT was created, sent and received;
- b. Identify each and every author of the DOCUMENT;

- c. Identify each and every other person who prepared and participated in the production of the DOCUMENT;
- d. Identify each and every person who received the DOCUMENT;
- e. Identify each and every person from whom the DOCUMENT was received;
- f. State a description of the DOCUMENT sufficient to identify it without revealing the information for which the privilege is claimed;
- g. State the present location of the DOCUMENT and all copies thereof;
- h. Identify each and every person having custody or control of the DOCUMENT and all copies thereof;
- i. Provide sufficient further information concerning the DOCUMENT to explain the claim of privilege and to permit the adjudication of the propriety of that claim.

5. Notwithstanding the assertion of any privilege or objection, any DOCUMENT which contains both privileged or objectionable and non-privileged or non-objectionable information which is responsive to this request must be produced with the privileged or objectionable information redacted from the DOCUMENT.

6. Copies of the file tab or label of the file in which a DOCUMENT called for by this request is found shall be produced along with the DOCUMENTS found in the file.

7. DOCUMENTS attached to each other should not be separated.

8. DOCUMENTS not otherwise called for by this request shall be produced if such DOCUMENTS refer to, relate to or explain the DOCUMENTS which are called for by this request or if such DOCUMENTS are attached to DOCUMENTS called for by this request and constitute routing slips, transmittal memoranda, letters, comments, evaluations of similar DOCUMENTS.

9. If the deponent is aware that a DOCUMENT or thing, or group of DOCUMENTS or things, once existed, but has been destroyed, the deponent is requested to state when the

DOCUMENT, group of DOCUMENTS, thing or group of things, was destroyed, why it was destroyed, and the circumstances under which it was destroyed.

10. "YOU" and "YOUR" means the deponent.

11. "PERSON" shall mean and refer to all individuals, corporations, associations, governmental agencies, or any other type of business or legal entity.

12. "PLAINTIFF" shall refer to Jennifer Osbelt who is the Plaintiff and Cross-Defendant in this litigation.

13. "NEWN" shall refer to the National Expert Witness Network, a California Limited Liability Company.

14. "TCLE" shall refer to the Technology CLE, a California Limited Liability Company.

REQUESTED DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

All DOCUMENTS concerning or relating to any note or loan obligations of NEWN.

REQUEST FOR PRODUCTION NO. 2:

All DOCUMENTS concerning or relating to any note or loan obligations of TCLE.

REQUEST FOR PRODUCTION NO. 3:

All DOCUMENTS concerning or relating to any notes or loans made by NEWN.

REQUEST FOR PRODUCTION NO. 4:

All DOCUMENTS concerning or relating to any notes or loans made by TCLE.

REQUEST FOR PRODUCTION NO. 5:

All DOCUMENTS relating to any communications or correspondence between YOU and PLAINTIFF within the last 12 months.

REQUEST FOR PRODUCTION NO. 6:

All DOCUMENTS reflecting any statement made by YOU in the last 12 months about or concerning PLAINTIFF.

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REQUEST FOR PRODUCTION NO. 7:

All DOCUMENTS relating to YOUR offer to purchase PLAINTIFF's interest in NEWN on or about March 26, 2007.

REQUEST FOR PRODUCTION NO. 8:

All DOCUMENTS relating to NEWN's offer to purchase PLAINTIFF's interest in NEWN on or about March 26, 2007.

REQUEST FOR PRODUCTION NO. 9:

All DOCUMENTS relating to PLAINTIFF's acceptance of YOUR offer to purchase her interest in NEWN on or about March 26, 2007.

REQUEST FOR PRODUCTION NO. 10:

All DOCUMENTS relating to PLAINTIFF's acceptance of NEWN's offer to purchase her interest in NEWN on or about March 26, 2007.

REQUEST FOR PRODUCTION NO. 11:

All DOCUMENTS relating to NEWN'S tax returns and records for the last five years.

REQUEST FOR PRODUCTION NO. 12:

All DOCUMENTS relating to TCLE's tax returns and records for the last five years.

REQUEST FOR PRODUCTION NO. 13:

All DOCUMENTS relating to YOUR books and records for the last five years.

REQUEST FOR PRODUCTION NO. 14:

All DOCUMENTS relating to TCLE's books and records for the last five years.

REQUEST FOR PRODUCTION NO. 15:

All DOCUMENTS relating to NEWN's books and records for the last five years.

REQUEST FOR PRODUCTION NO. 16:

All DOCUMENTS concerning or relating to any bank statements or account summaries of NEWN for the last five years.

REQUEST FOR PRODUCTION NO. 17:

All DOCUMENTS concerning or relating to any bank statements or account summaries for TCLE for the last three years.

1 **REQUEST FOR PRODUCTION NO. 18:**

2 All DOCUMENTS relating to expense claims submitted to NEWN by PLAINTIFF for
3 reimbursement for the last five years.

4 **REQUEST FOR PRODUCTION NO. 19:**

5 All DOCUMENTS relating to expense claims submitted to NEWN by David D.
6 McDonald for reimbursement for the last five years.

7 **REQUEST FOR PRODUCTION NO. 20:**

8 All DOCUMENTS relating to expense claims submitted to NEWN by Donna K.
9 McDonald for reimbursement for the last five years.

10 **REQUEST FOR PRODUCTION NO. 21:**

11 All DOCUMENTS relating to expense claims submitted to TCLE by PLAINTIFF for
12 reimbursement for the last three years.

13 **REQUEST FOR PRODUCTION NO. 22:**

14 All DOCUMENTS relating to expense claims submitted to TCLE by David D.
15 McDonald for reimbursement for the last three years.

16 **REQUEST FOR PRODUCTION NO. 23:**

17 All DOCUMENTS relating to expense claims submitted to TCLE by Donna K.
18 McDonald for reimbursement for the last three years.

19 **REQUEST FOR PRODUCTION NO. 24:**

20 All DOCUMENTS relating to expenses charged to the NEWN company credit card by
21 PLAINTIFF or any other person over the last five years.

22 **REQUEST FOR PRODUCTION NO. 25:**

23 All DOCUMENTS relating to any payments made by NEWN to PLAINTIFF in the last
24 five years.

25 **REQUEST FOR PRODUCTION NO. 26:**

26 All DOCUMENTS relating to any payments made by NEWN to David D. McDonald in
27 the last five years.

1 **REQUEST FOR PRODUCTION NO. 27:**

2 All DOCUMENTS relating to any payments made by NEWN to Donna K. McDonald in
3 the last five years.

4 **REQUEST FOR PRODUCTION NO. 28:**

5 All DOCUMENTS relating to any payments made by TCLE to PLAINTIFF in the last
6 three years.

7 **REQUEST FOR PRODUCTION NO. 29:**

8 All DOCUMENTS relating to any payments made by TCLE to David D. McDonald in
9 the last three years.

10 **REQUEST FOR PRODUCTION NO. 30:**

11 All DOCUMENTS relating to any payments made by TCLE to Donna K. McDonald in
12 the last three years.

13 **REQUEST FOR PRODUCTION NO. 31:**

14 All DOCUMENTS relating to YOUR allegations that PLAINTIFF made false and
15 duplicative reimbursement expense requests.

16 **REQUEST FOR PRODUCTION NO. 32:**

17 All DOCUMENTS relating to NEWN's patent applications pending with the USPTO.

18 **REQUEST FOR PRODUCTION NO. 33:**

19 All DOCUMENTS relating to TCLE's patent applications pending with the USPTO.

20 **REQUEST FOR PRODUCTION NO. 34:**

21 All DOCUMENTS reflecting the projected value of the patent as alleged in paragraph 23
22 of the Cross-Complaint.

23 **REQUEST FOR PRODUCTION NO. 35:**

24 All DOCUMENTS reflecting any expenses incurred as a result of the patent application
25 process.

26 **REQUEST FOR PRODUCTION NO. 36:**

27 All DOCUMENTS and recorded statements provided to NEWN's accountants over the
28 last five years.

1 **REQUEST FOR PRODUCTION NO. 37:**

2 All DOCUMENTS and recorded statements provided to TCLE's accountants over the
3 last three years.

4 **REQUEST FOR PRODUCTION NO. 38:**

5 All tax returns, tax schedules, and other related DOCUMENTS filed by or on behalf of
6 NEWN for the last five years.

7 **REQUEST FOR PRODUCTION NO. 39:**

8 All DOCUMENTS reflecting any amendments or modifications to the NEWN Operating
9 Agreement or Articles of Incorporation.

10 **REQUEST FOR PRODUCTION NO. 40:**

11 All DOCUMENTS relating to the governance of NEWN.

12 **REQUEST FOR PRODUCTION NO. 41:**

13 All DOCUMENTS concerning or relating to the business plans of NEWN for the last five
14 years.

15 **REQUEST FOR PRODUCTION NO. 42:**

16 All DOCUMENTS concerning or relating to the business plans of TCLE for the last five
17 years.

18 **REQUEST FOR PRODUCTION NO. 43:**

19 All DOCUMENTS relating to the governance of the TCLE.

20 **REQUEST FOR PRODUCTION NO. 44:**

21 All DOCUMENTS concerning or relating to any defamatory statements allegedly made
22 by PLAINTIFF'S about YOU, NEWN or TCLE.

23 **REQUEST FOR PRODUCTION NO. 45:**

24 All DOCUMENTS identified in response to special interrogatories 2, 6, 9, 11, 15, 17, 21,
25 24, 27, 30 and 33.

26 **REQUEST FOR PRODUCTION NO. 46:**

27 All DOCUMENTS pertaining to PLAINTIFF's 401K plan with NEWN.

1 **REQUEST FOR PRODUCTION NO. 47:**

2 All DOCUMENTS pertaining to PLAINTIFF's 401K plan with TCLE.

3 **REQUEST FOR PRODUCTION NO. 48:**

4 All DOCUMENTS pertaining to PLAINTIFF's Profit Sharing Plan with NEWN.

5 **REQUEST FOR PRODUCTION NO. 49:**

6 All DOCUMENTS pertaining to PLAINTIFF's Profit Sharing Plan with TCLE.

7 **REQUEST FOR PRODUCTION NO. 50:**

8 All DOCUMENTS relating to any consulting agreements or services provided to NEWN.

9 **REQUEST FOR PRODUCTION NO. 51:**

10 All DOCUMENTS relating to any consulting agreements or services provided to TCLE.

11 **REQUEST FOR PRODUCTION NO. 52:**

12 All DOCUMENTS relating to any payments made by NEWN for consulting services in
13 the last five years.

14 **REQUEST FOR PRODUCTION NO. 53:**

15 All DOCUMENTS relating to any payments made by TCLE for consulting services in
16 the last three years.

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Jennifer Osbelt, v. David D. McDonald, Donna K. McDonald, et al.
San Mateo Superior Court CIV 463528

PROOF OF SERVICE

I am employed in San Mateo County, which is where service of the document(s) referred to below occurred. I am over the age of 18 and not a party to the within action. My business address is Cotchett, Pitre & McCarthy, San Francisco Airport Center, 840 Malcolm Road, Suite 200, Burlingame, California 94010. I am readily familiar with Cotchett, Pitre & McCarthy's practices for the service of documents. On this date, I served a true copy of the following document(s) in the manner listed below:

PLAINTIFF'S SECOND AMENDED NOTICE OF DEPOSITION OF DONNA MCDONALD

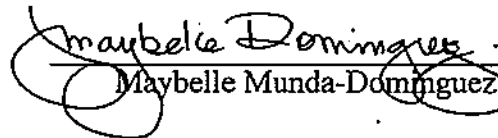
XXX BY MAIL: I am readily familiar with this firm's practice for collection and processing of correspondence for mailing. Following that practice, I placed a true copy of the aforementioned document(s) in a sealed envelope, addressed to each addressee, respectively, as specified below. The envelope was placed in the mail at my business address, with postage thereon fully prepaid, for deposit with the United States Postal Service on that same day in the ordinary course of business.

William J. Goines
 Karen Rosenthal
 Cindy Hamilton
GREENBERG TRAURIG, LLP
 1900 University Avenue, Fifth Floor
 East Palo Alto, CA 94303
 Tel.: (650) 328-8500
 Fax: (650) 328-8508

BY HAND DELIVERY: I am readily familiar with this firm's practice for causing documents to be served by hand delivery. Following that practice, I caused the sealed envelope containing the aforementioned document(s) to be hand delivered to the addressee(s) specified below.

BY OVERNIGHT COURIER SERVICE: I am readily familiar with this firm's practice for causing documents to be served by overnight courier. Following that practice, I caused the sealed envelope containing the aforementioned document(s) to be delivered via overnight courier service to the addressee(s) specified below:

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Burlingame, California, on September 25, 2007.


 Maybelle Munda-Dominguez

SEP
MO

RECEIVED

OCT 11 2007

COTCHETT, PITRE & MCCARTHY

1 WILLIAM J. GOINES (SBN 61290)
2 KAREN ROSENTHAL (SBN 209419)
3 CINDY HAMILTON (SBN 217951)
4 GREENBERG TRAURIG, LLP
5 1900 University Avenue, Fifth Floor
6 East Palo Alto, California 94303
7 Telephone: (650) 328-8500
8 Facsimile: (650) 328-8508

9 Attorneys for Defendants and
10 Cross-Complainants David McDonald,
11 Donna McDonald, National Expert
12 Witness Network. and Technology CLE

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN MATEO
11

12 JENNIFER OSBELT,

13 Plaintiff;

14 v.

15 DAVID D. McDONALD, DONNA K.
16 McDONALD, et al.,

17 Defendant(s).

Case No. CIV 463528

**DEFENDANT DAVID MCDONALD'S
OBJECTION TO SECOND AMENDED
NOTICE OF DEPOSITION AND REQUEST
FOR PRODUCTION OF DOCUMENTS**

18 AND RELATED CROSS-ACTION
19

20 Pursuant to California Code of Civil Procedure Section 2031.210, Defendant David
21 McDonald ("Defendant") hereby objects and responds to Plaintiff's Second Amended Notice of
22 Deposition and Request for Production of Documents of David McDonald.

23 The following objections and responses are based on Defendant's knowledge at this time, and
24 Defendant expressly reserves the right to supplement these objections and responses as its
25 investigation continues. None of Defendant's responses herein shall be deemed to constitute
26 admissions that any particular document or thing exists, is relevant, non-privileged, or admissible in
27 evidence, is in Defendant's possession, custody or control, or that any statement or characterization in
28 the Subpoena is accurate or complete.

GENERAL OBJECTIONS

The following general objections apply to the entirety of the Notice of Deposition and are expressly incorporated into each of the specific responses set forth below:

1. Defendant objects to the Deposition Notice to the extent that its service was defective or otherwise failed to comply with the California Code of Civil Procedure.

2. Defendant objects to each request to the extent that it is overly broad and subjects Defendant to unreasonable and undue annoyance, oppression, burden, and expense and seeks materials or information which are not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence.

3. Defendant objects to the use of the phrase "all documents" as overbroad. Defendant will make a reasonable search for documents responsive to each request not objected to, but cannot assure that "all documents" referring or relating a particular topic will be identified in this search.

4. Defendant generally objects to the Deposition Notice and its purported "Definitions," to the extent that it seeks to impose obligations beyond those required under the California Code of Civil Procedure.

5. Defendant objects to the Deposition Notice on the basis that the purported "Definitions and Instructions" are vague and/or ambiguous and/or overbroad and/or unduly burdensome.

6. Defendant objects to the purported "Instructions," and each of them, to the extent that they purport to impose any different or greater obligations than those set forth in the California Code of Civil Procedure. Defendant further objects to the "Instructions," and each of them to the extent that they misstate or mischaracterize the obligations of Defendant with regard to the Subpoena or any other matter.

7. Defendant objects to each request to the extent that it seeks materials or information which are not in the possession, custody or control of Defendant and/or which are equally or more readily available to Defendant.

8. Defendant objects to each request to the extent that it seeks materials or information which would disclose Defendant's trade secrets or other confidential or proprietary information

1 and/or trade secrets or other confidential or proprietary information of third parties obtained by
2 Defendant under an express or implied promise of confidentiality.

3 9. Defendant objects to each request to the extent that it is unreasonably cumulative and
4 duplicative.

5 10. Defendant objects to each request to the extent that it calls for materials or
6 information of Defendant and/or its subsidiaries or affiliates to the extent that disclosure of the
7 information is prohibited by applicable law.

8 11. Defendant objects to the Deposition Notice on the basis that it fails to allow
9 reasonable time for compliance and otherwise fails to take reasonable steps to avoid imposing undue
10 burden or expense on Defendant as required by the California Code of Civil Procedure.

11 12. Defendant objects to the Deposition Notice to the extent that it purports to impose
12 upon Defendant the obligation to produce materials or information in any manner other than that
13 required by the California Code of Civil Procedure.

14 13. Defendant objects to the Deposition Notice to the extent that it purports to impose
15 upon Defendant the obligation to prepare a privilege log in any manner other than that required by the
16 California Code of Civil Procedure.

17 14. Defendant objects to the Subpoena to the extent that it purports to impose a continuing
18 duty to produce documents or information.

19 15. Defendant objects to each of the requests because of the substantial risk that
20 Defendant will use the information sought for impermissible purposes unrelated to the present
21 litigation.

22 16. Defendant's General Objections shall be continuing as to each request and are not
23 waived or in any way limited by the following specific objections.

24
25 **REQUEST FOR PRODUCTION NO. 1:**

26 All DOCUMENTS concerning or relating to any note or loan obligations of NEWN.
27
28

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Defendant objects to this request on the grounds that it is vague and ambiguous with regard to the undefined terms "note" and "loan obligations". Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 2:

All DOCUMENTS concerning or relating to any note or loan obligations of TCLE.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Defendant objects to this request on the grounds that it is vague and ambiguous with regard to the undefined terms "note" and "loan obligations". Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 3:

All DOCUMENTS concerning or relating to any notes or loan made by NEWN.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Defendant objects to this request on the grounds that it is vague and ambiguous with regard to the undefined terms "notes" and "loan". Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 4:

All DOCUMENTS concerning or relating to any notes or loans made by TCLE.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Defendant objects to this request on the grounds that it is vague and ambiguous with regard to the undefined terms "notes" and "loan". Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 5:

All DOCUMENTS relating to any communications or correspondence between YOU and PLAINTIFF within the last 12 months.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Defendant objects to this request on the grounds that that it is vague, ambiguous, burdensome, overbroad, and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control that relate to the subject matter of the Complaint and the Cross-Complaint.

REQUEST FOR PRODUCTION NO. 6:

All DOCUMENTS reflecting any statement made by YOU in the last 12 months about or concerning PLAINTIFF.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

Defendant objects to this request on the grounds that that it is vague, ambiguous, burdensome, overbroad and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control that relate to the subject matter of the Complaint and the Cross-Complaint.

REQUEST FOR PRODUCTION NO. 7:

All DOCUMENTS relating to YOUR offer to purchase PLAINTIFF's interest in NEWN on or about March 26, 2007.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

Defendant objects to this request on the grounds that the undefined term "offer" calls for a legal conclusion. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 8:

All DOCUMENTS relating to NEWN's offer to purchase PLAINTIFF's interest in NEWN on or about March 26, 2007.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8

Defendant objects to this request on the grounds that the undefined term "offer" calls for a legal conclusion. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 9:

All DOCUMENTS relating to PLAINTIFF's acceptance of YOUR offer to purchase her interest in NEWN on or about March 26, 2007.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

Defendant objects to this request on the grounds that the undefined term "acceptance" calls for a legal conclusion. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 10:

All DOCUMENTS relating to PLAINTIFF's acceptance of NEWN's offer to purchase her interest in NEWN on or about March 26, 2007.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

Defendant objects to this request on the grounds that the undefined term "acceptance" calls for a legal conclusion. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 11:

All DOCUMENTS relating to NEWN's tax returns and records for the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

Defendant objects to this request on the grounds that this request violates the taxpayer privilege. Defendant will not produce documents responsive to this request.

REQUEST FOR PRODUCTION NO. 12:

All DOCUMENTS relating to TCLE's tax returns and records for the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

Defendant objects to this request on the grounds that this request violates the taxpayer privilege. Defendant will not produce documents responsive to this request.

REQUEST FOR PRODUCTION NO. 13:

All DOCUMENTS relating to YOUR books and records for the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

Defendant objects to this request on the grounds that the request is overbroad, burdensome and not reasonably calculated to lead to discoverable information. Defendant will not produce documents responsive to this request.

REQUEST FOR PRODUCTION NO. 14:

All DOCUMENTS relating to TCLE's books and records for the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14

Defendant objects to this request on the grounds that documents responsive to this request have already been produced to Plaintiffs. Defendant further objects to this request on the grounds that the request is overbroad, burdensome and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents not previously produced to Plaintiff within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 15:

All DOCUMENTS relating to NEWN's books and records for the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15

Defendant objects to this request on the grounds that documents responsive to this request have already been produced to Plaintiffs. Defendant further objects to this request on the grounds that the request is overbroad, burdensome and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents not previously produced to Plaintiff within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 16:

All DOCUMENTS concerning or relating to any bank statements or account summaries of NEWN for the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

Defendant objects to this request on the grounds that documents responsive to this request have already been produced to Plaintiffs. Defendant further objects to this request on the grounds that the request is overbroad, burdensome and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents not previously produced to Plaintiff within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 17:

All DOCUMENTS concerning or relating to any bank statements or account summaries of TCLE for the last three years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

Defendant objects to this request on the grounds that documents responsive to this request have already been produced to Plaintiffs. Defendant further objects to this request on the grounds that the request is overbroad, burdensome and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents not previously produced to Plaintiff within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 18:

All DOCUMENTS relating to expense claims submitted to NEWN by PLAINTIFF for reimbursement for the last five years.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

2 Defendant will produce documents responsive to this request.

3 **REQUEST FOR PRODUCTION NO. 19:**

4 All DOCUMENTS relating to expense claims submitted to NEWN by David D. McDonald
5 for reimbursement for the last five years.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

7 Defendant objects to this request on the grounds that it is overbroad, burdensome, and not
8 reasonably calculated to lead to discoverable information as this request does not relate to the
9 allegations contained in the Complaint or Cross-Complaint. Defendant will not produce documents
10 responsive to this request.

11 **REQUEST FOR PRODUCTION NO. 20:**

12 All DOCUMENTS relating to expense claims submitted to NEWN by Donna K. McDonald
13 for reimbursement for the last five years.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

15 Defendant objects to this request on the grounds that it is overbroad, burdensome, and not
16 reasonably calculated to lead to discoverable information as this request does not relate to the
17 allegations contained in the Complaint or Cross-Complaint. Defendant will not produce documents
18 responsive to this request.

19 **REQUEST FOR PRODUCTION NO. 21:**

20 All DOCUMENTS relating to expense claims submitted to TCLE by PLAINTIFF for
21 reimbursement for the last three years.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

23 Defendant will produce documents responsive to this request.

24 **REQUEST FOR PRODUCTION NO. 22:**

25 All DOCUMENTS relating to expense claims submitted to TCLE by David D. McDonald for
26 reimbursement for the last three years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22:

Defendant objects to this request on the grounds that it is overbroad, burdensome, and not reasonably calculated to lead to discoverable information as this request does not relate to the allegations contained in the Complaint or Cross-Complaint. Defendant will not produce documents responsive to this request.

REQUEST FOR PRODUCTION NO. 23:

All DOCUMENTS relating to expense claims submitted to TCLE by Donna K. McDonald for reimbursement for the last three years

RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

Defendant objects to this request on the grounds that it is overbroad, burdensome, and not reasonably calculated to lead to discoverable information as this request does not relate to the allegations contained in the Complaint or Cross-Complaint. Defendant will not produce documents responsive to this request.

REQUEST FOR PRODUCTION NO. 24:

All DOCUMENTS relating to expenses charged to the NEWN company credit card by PLAINTIFF or any other person over the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 24:

Defendant objects to this request on the grounds that it is overbroad, burdensome, and not reasonably calculated to lead to discoverable information as this request does not relate to the allegations contained in the Complaint or Cross-Complaint. Defendant will not produce documents responsive to this request.

REQUEST FOR PRODUCTION NO. 25:

All DOCUMENTS relating to any payments made by NEWN to PLAINTIFF in the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 25:

Defendant will produce documents responsive to this request.

1 **REQUEST FOR PRODUCTION NO. 26:**

2 All DOCUMENTS relating to any payments made by NEWN to David D. McDonald in the
3 last five years.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

5 Defendant objects to this request on the grounds that it is overbroad, burdensome, and not
6 reasonably calculated to lead to discoverable information as this request does not relate to the
7 allegations contained in the Complaint or Cross-Complaint. Defendant will not produce documents
8 responsive to this request.

9 **REQUEST FOR PRODUCTION NO. 27:**

10 All DOCUMENTS relating to any payments made by NEWN to Donna K. McDonald in the
11 last five years.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

13 Defendant objects to this request on the grounds that it is overbroad, burdensome, and not
14 reasonably calculated to lead to discoverable information as this request does not relate to the
15 allegations contained in the Complaint or Cross-Complaint. Defendant will not produce documents
16 responsive to this request.

17 **REQUEST FOR PRODUCTION NO. 28:**

18 All DOCUMENTS relating to any payments made by TCLE to PLAINTIFF in the last three
19 years.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

21 Defendant will produce documents responsive to this request within Defendant's possession,
22 custody or control.

23 **REQUEST FOR PRODUCTION NO. 29:**

24 All DOCUMENTS relating to any payments made by TCLE to David D. McDonald in the
25 last three years.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

27 Defendant objects to this request on the grounds that it is overbroad, burdensome, and not
28 reasonably calculated to lead to discoverable information as this request does not relate to the

allegations contained in the Complaint or Cross-Complaint. Defendant will not produce documents responsive to this request.

REQUEST FOR PRODUCTION NO. 30:

All DOCUMENTS relating to any payments made by TCLE to Donna K. McDonald in the last three years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 30:

Defendant objects to this request on the grounds that it is overbroad, burdensome, and not reasonably calculated to lead to discoverable information as this request does not relate to the allegations contained in the Complaint or Cross-Complaint. Defendant will not produce documents responsive to this request.

REQUEST FOR PRODUCTION NO. 31:

All DOCUMENTS relating to YOUR allegations that PLAINTIFF made false and duplicative reimbursement expense requests.

RESPONSE TO REQUEST FOR PRODUCTION NO. 31:

Defendant objects to this request on the ground that it calls for a legal conclusion. Defendant further objects on the ground that the request is vague, ambiguous, and overly broad. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 32:

All DOCUMENTS relating to NEWN's patent applications pending with the USPTO.

RESPONSE TO REQUEST FOR PRODUCTION NO. 32:

Defendant will produce documents responsive to this request within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 33:

All DOCUMENTS relating to TCLE's patent applications pending with the USPTO

RESPONSE TO REQUEST FOR PRODUCTION NO. 33:

Defendant will produce documents responsive to this request within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 34:

All DOCUMENTS reflecting the projected value of the patent as alleged in paragraph 23 of the Cross-Complaint.

RESPONSE TO REQUEST FOR PRODUCTION NO. 34:

Defendant objects to this request on the grounds that it is vague and ambiguous with regard to the undefined term "projected value". Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 35:

All DOCUMENTS reflecting any expenses incurred as a result of the patent application process.

RESPONSE TO REQUEST FOR PRODUCTION NO. 35:

Defendant will produce documents responsive to this request within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 36:

All DOCUMENTS and recorded statements provided to NEWN's accountants over the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 36:

Defendant objects to this request on the grounds that this request violates the taxpayer privilege. Defendant further objects to this request on the grounds that documents responsive to this request have previously been provided to Plaintiffs. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request that have not been previously produced and that do not violate the taxpayer privilege.

REQUEST FOR PRODUCTION NO. 37:

All DOCUMENTS and recorded statements provided to TCLE's accountants over the last three years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 37:

Defendant objects to this request on the grounds that this request violates the taxpayer privilege. Defendant further objects to this request on the grounds that documents responsive to this request have previously been provided to Plaintiffs. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request that have not been previously produced and that do not violate the taxpayer privilege.

REQUEST FOR PRODUCTION NO. 38:

All tax returns, tax schedules, and other related DOCUMENTS filed by or on behalf of NEWN for the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 38:

Defendant objects to this request on the grounds that this request violates the taxpayer privilege. Defendant will produce documents responsive to this request that have not been previously produced and that do not violate the taxpayer privilege.

REQUEST FOR PRODUCTION NO. 39:

All DOCUMENTS reflecting any amendments or modifications to the NEWN Operating Agreement or Articles of Incorporation.

RESPONSE TO REQUEST FOR PRODUCTION NO. 39:

Defendant objects to this request on the grounds that is vague and ambiguous with regard to the undefined terms "amendments" and "modifications". Subject to and without waiving the foregoing objections, Defendant will produce documents responsive to this request within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 40:

All DOCUMENTS relating to the governance of NEWN.

RESPONSE TO REQUEST FOR PRODUCTION NO. 40:

Defendant objects to this request on the grounds that is vague and ambiguous with regard to the undefined term "governance". Subject to and without waiving the foregoing objections, Defendant will produce documents responsive to this request within Defendant's possession, custody and control.

1 **REQUEST FOR PRODUCTION NO. 41:**

2 All DOCUMENTS concerning or relating to the business plans of NEWN for the last five
3 years.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 41:**

5 Defendant objects to this request on the grounds that is vague and ambiguous with regard to
6 the undefined term "business plans". Subject to and without waiving the foregoing objections,
7 Defendant will produce documents responsive to this request within Defendant's possession, custody
8 and control.

9 **REQUEST FOR PRODUCTION NO. 42:**

10 All DOCUMENTS concerning ore relating to the business plans of TCLE for the last five
11 years.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 42:**

13 Defendant objects to this request on the grounds that is vague and ambiguous with regard to
14 the undefined term "business plans". Subject to and without waiving the foregoing objections,
15 Defendant will produce documents responsive to this request within Defendant's possession, custody
16 and control.

17 **REQUEST FOR PRODUCTION NO. 43:**

18 All DOCUMENTS relating to the governance of the TCLE.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 43:**

20 Defendant objects to this request on the grounds that is vague and ambiguous with regard to
21 the undefined term "governance". Subject to and without waiving the foregoing objections,
22 Defendant will produce documents responsive to this request within Defendant's possession, custody
23 and control.

1 **REQUEST FOR PRODUCTION NO. 44:**

2 All DOCUMENTS concerning or relating to any defamatory statements allegedly made by
3 PLAINTIFFS about YOU, NEWN or TCLE.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 44:**

5 Defendant objects to this request on the grounds that it is vague, ambiguous and overly broad.
6 Defendant further objects to the phrase "defamatory statements" on the ground that it calls for a legal
7 conclusion. Subject to and without waiving the foregoing objection, Defendant will produce
8 documents responsive to this request within Defendant's possession, custody and control.

9 **REQUEST FOR PRODUCTION NO. 45:**

10 All DOCUMENTS identified in response to special interrogatories 2, 6, 9, 11, 15, 17, 21.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 45:**

12 Defendant objects to this request on the grounds that it is vague, ambiguous and overly broad.
13 Subject to and without waiving this objection or the objections in response to special interrogatories
14 2, 6, 9, 11, 15, 17, 21, Defendant will produce documents responsive to this request within
15 Defendant's possession, custody and control.

16 **REQUEST FOR PRODUCTION NO. 46:**

17 All DOCUMENTS pertaining to PLAINTIFF's 401K plan with NEWN.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 46:**

19 Defendant objects to this request on the grounds that that it is vague, ambiguous, burdensome,
20 overbroad, and not reasonably calculated to lead to discoverable information. Subject to and without
21 waiving the foregoing objection, Defendant will produce documents responsive to this request within
22 Defendant's possession, custody and control that relate to the subject matter of the Complaint and the
23 Cross-Complaint.

24 **REQUEST FOR PRODUCTION NO. 47:**

25 All DOCUMENTS pertaining to PLAINTIFF's 401K plan with TCLE.
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RESPONSE TO REQUEST FOR PRODUCTION NO. 47:

Defendant objects to this request on the grounds that that it is vague, ambiguous, burdensome, overbroad, and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control that relate to the subject matter of the Complaint and the Cross-Complaint.

REQUEST FOR PRODUCTION NO. 48:

All DOCUMENTS pertaining to PLAINTIFF's Profit Sharing Plan with NEWN.

RESPONSE TO REQUEST FOR PRODUCTION NO. 48:

Defendant objects to this request on the grounds that that it is vague, ambiguous, burdensome, overbroad, and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control that relate to the subject matter of the Complaint and the Cross-Complaint.

REQUEST FOR PRODUCTION NO. 49:

All DOCUMENTS pertaining to PLAINTIFF's Profit Sharing Plan with TCLE.

RESPONSE TO REQUEST FOR PRODUCTION NO. 49:

Defendant objects to this request on the grounds that that it is vague, ambiguous, burdensome, overbroad, and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control that relate to the subject matter of the Complaint and the Cross-Complaint.

REQUEST FOR PRODUCTION NO. 50:

All DOCUMENTS relating to any consulting agreements or services provided to NEWN.

RESPONSE TO REQUEST FOR PRODUCTION NO. 50:

Defendant objects to this request on the grounds that that it is vague, ambiguous, burdensome, overbroad, and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control that relate to the subject matter of the Complaint and the Cross-Complaint.

REQUEST FOR PRODUCTION NO. 51:

All DOCUMENTS relating to any consulting agreements or services provided to TCLE.

RESPONSE TO REQUEST FOR PRODUCTION NO. 51:

Defendant objects to this request on the grounds that that it is vague, ambiguous, burdensome, overbroad, and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control that relate to the subject matter of the Complaint and the Cross-Complaint.

REQUEST FOR PRODUCTION NO. 52:

All DOCUMENTS relating to any payments made by NEWN for consulting services in the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 52:

Defendant objects to this request on the grounds that that it is vague, ambiguous, burdensome, overbroad, and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control that relate to the subject matter of the Complaint and the Cross-Complaint.

REQUEST FOR PRODUCTION NO. 53:

All DOCUMENTS relating to any payments made by TCLE for consulting services in the last three years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 53:

Defendant objects to this request on the grounds that that it is vague, ambiguous, burdensome, overbroad, and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control that relate to the subject matter of the Complaint and the Cross-Complaint.

Dated: October ____, 2007.

GREENBERG TRAURIG, LLP

By: Andy Hamilton / ang
William J. Goines
Karen Rosenthal
Cindy Hamilton

Attorneys for Defendants and Cross-Complainants
David McDonald, Donna McDonald, National
Expert Witness Network. and Technology CLE

Osbelt v. McDonald, et al.

Case No. CIV 463528

PROOF OF SERVICE

I, Cathy Sandifer, declare that I am a citizen of the United States, over the age of eighteen years and not a party to the within action. I am an employee of GREENBERG TRAURIG, LLP, and my business address is 1900 University Avenue, Fifth Floor, East Palo Alto, CA 94303. On October 9, 2007, I served the following documents:

**DEFENDANT DAVID MCDONALD'S OBJECTION TO SECOND AMENDED
NOTICE OF DEPOSITION AND REQUEST FOR PRODUCTION OF DOCUMENTS**

☒ by transmitting via **FACSIMILE** the document(s) listed above to the fax numbers) set forth below, or as stated on the attached service list, on this date at approximately _____, from the sending facsimile machine telephone number of 650-289-7893. The transmission was reported as complete and without error by the machine. Pursuant to California Rules of Court, Rule 2008(e)(4), I caused the machine to print a transmission record of the transmission, a copy of which is attached to the original of this declaration. The transmission report was properly issued by the transmitting facsimile machine.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the **UNITED STATES MAIL** at East Palo Alto, California, addressed as set forth below.

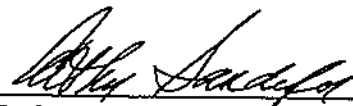
☐ by **OVERNIGHT MAIL** by placing the document(s) listed above in a sealed overnight mail envelope with postage thereon fully prepaid, addressed as set forth below.

☐ **(BY MESSENGER PERSONAL SERVICE)**. I caused delivery of such envelope by hand via courier service to the offices of the addressee.

Joseph W. Cotchett, Esq.
Cotchett, Pitre & McCarthy
840 Malcolm Rd., Ste. 200
Burlingame, CA 94010
Fax No. (650) 697-0577

I am readily familiar with the business practice of my place of employment in respect to the collection and processing of correspondence, pleadings and notices for mailing with United States Postal Service/Express Mail, Federal Express and other overnight mail services. The foregoing sealed envelope was placed for collection and mailing this date consistent with the ordinary business practice of my place of employment, so that it will be picked up this date with postage thereon fully prepaid at East Palo Alto, California, in the ordinary course of such business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 9, 2007, at East Palo Alto, California.


Cathy Sandifer

1
Proof of Service

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SEP
MD**RECEIVED**

OCT 11 2007

COTCHETT, PITRE & MCCARTHY

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 Donna McDonald, National Expert
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SAN MATEO

JENNIFER OSBELT,

Plaintiff;

v.

DAVID D. McDONALD, DONNA K.
McDONALD, et al.,

Defendant(s).

Case No. CIV 463528

**DEFENDANT DONNA MCDONALD'S
 OBJECTION TO SECOND AMENDED
 NOTICE OF DEPOSITION AND REQUEST
 FOR PRODUCTION OF DOCUMENTS**

AND RELATED CROSS-ACTION

Pursuant to California Code of Civil Procedure Section 2031.210, Defendant Donna McDonald ("Defendant") hereby objects and responds to Plaintiff's Second Amended Notice of Deposition and Request for Production of Documents of Donna McDonald.

The following objections and responses are based on Defendant's knowledge at this time, and Defendant expressly reserves the right to supplement these objections and responses as its investigation continues. None of Defendant's responses herein shall be deemed to constitute admissions that any particular document or thing exists, is relevant, non-privileged, or admissible in evidence, is in Defendant's possession, custody or control, or that any statement or characterization in the Subpoena is accurate or complete. In the event that any documents or materials are produced,

1 Defendant expressly reserves its right to recover from Defendant the expenses, including attorneys'
2 fees and costs, resulting from any inspection and copying commanded by the Subpoena.

3 **GENERAL OBJECTIONS**

4 The following general objections apply to the entirety of the Notice of Deposition and are
5 expressly incorporated into each of the specific responses set forth below:

6 1. Defendant objects to the Deposition Notice to the extent that its service was defective
7 or otherwise failed to comply with the California Code of Civil Procedure.

8 2. Defendant objects to each request to the extent that it is overly broad and subjects
9 Defendant to unreasonable and undue annoyance, oppression, burden, and expense and seeks
10 materials or information which are not relevant to the subject matter of this lawsuit, nor reasonably
11 calculated to lead to the discovery of admissible evidence.

12 3. Defendant objects to the use of the phrase "all documents" as overbroad. Defendant
13 will make a reasonable search for documents responsive to each request not objected to, but cannot
14 assure that "all documents" referring or relating a particular topic will be identified in this search.

15 4. Defendant generally objects to the Deposition Notice and its purported "Definitions,"
16 to the extent that it seeks to impose obligations beyond those required under the California Code of
17 Civil Procedure.

18 5. Defendant objects to the Deposition Notice on the basis that the purported
19 "Definitions and Instructions" are vague and/or ambiguous and/or overbroad and/or unduly
20 burdensome.

21 6. Defendant objects to the purported "Instructions," and each of them, to the extent that
22 they purport to impose any different or greater obligations than those set forth in the California Code
23 of Civil Procedure. Defendant further objects to the "Instructions," and each of them to the extent
24 that they misstate or mischaracterize the obligations of Defendant with regard to the Subpoena or any
25 other matter.

26 7. Defendant objects to each request to the extent that it seeks materials or information
27 which are not in the possession, custody or control of Defendant and/or which are equally or more
28 readily available to Defendant.

1 8. Defendant objects to each request to the extent that it seeks materials or information
2 which would disclose Defendant's trade secrets or other confidential or proprietary information
3 and/or trade secrets or other confidential or proprietary information of third parties obtained by
4 Defendant under an express or implied promise of confidentiality.

5 9. Defendant objects to each request to the extent that it is unreasonably cumulative and
6 duplicative.

7 10. Defendant objects to each request to the extent that it calls for materials or
8 information of Defendant and/or its subsidiaries or affiliates to the extent that disclosure of the
9 information is prohibited by applicable law.

10 11. Defendant objects to the Deposition Notice on the basis that it fails to allow
11 reasonable time for compliance and otherwise fails to take reasonable steps to avoid imposing undue
12 burden or expense on Defendant as required by the California Code of Civil Procedure.

13 12. Defendant objects to the Deposition Notice to the extent that it purports to impose
14 upon Defendant the obligation to produce materials or information in any manner other than that
15 required by the California Code of Civil Procedure.

16 13. Defendant objects to the Deposition Notice to the extent that it purports to impose
17 upon Defendant the obligation to prepare a privilege log in any manner other than that required by the
18 California Code of Civil Procedure.

19 14. Defendant objects to the Subpoena to the extent that it purports to impose a continuing
20 duty to produce documents or information.

21 15. Defendant objects to each of the requests because of the substantial risk that
22 Defendant will use the information sought for impermissible purposes unrelated to the present
23 litigation.

24 16. Defendant's General Objections shall be continuing as to each request and are not
25 waived or in any way limited by the following specific objections.

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1 **REQUEST FOR PRODUCTION NO. 1:**

2 All DOCUMENTS concerning or relating to any note or loan obligations of NEWN.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

4 Defendant objects to this request on the grounds that it is vague and ambiguous with regard to
5 the undefined terms "note" and "loan obligations". Subject to and without waiving the foregoing
6 objection, Defendant will produce documents responsive to this request within Defendant's
7 possession, custody and control.

8 **REQUEST FOR PRODUCTION NO. 2:**

9 All DOCUMENTS concerning or relating to any note or loan obligations of TCLE.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

11 Defendant objects to this request on the grounds that it is vague and ambiguous with regard to
12 the undefined terms "note" and "loan obligations". Subject to and without waiving the foregoing
13 objection, Defendant will produce documents responsive to this request within Defendant's
14 possession, custody and control.

15 **REQUEST FOR PRODUCTION NO. 3:**

16 All DOCUMENTS concerning or relating to any notes or loan made by NEWN.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

18 Defendant objects to this request on the grounds that it is vague and ambiguous with regard to
19 the undefined terms "notes" and "loan". Subject to and without waiving the foregoing objection,
20 Defendant will produce documents responsive to this request within Defendant's possession, custody
21 and control.

22 **REQUEST FOR PRODUCTION NO. 4:**

23 All DOCUMENTS concerning or relating to any notes or loans made by TCLE.
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RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Defendant objects to this request on the grounds that it is vague and ambiguous with regard to the undefined terms "notes" and "loan". Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 5:

All DOCUMENTS relating to any communications or correspondence between YOU and PLAINTIFF within the last 12 months.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Defendant objects to this request on the grounds that that it is vague, ambiguous, burdensome, overbroad, and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control that relate to the subject matter of the Complaint and the Cross-Complaint.

REQUEST FOR PRODUCTION NO. 6:

All DOCUMENTS reflecting any statement made by YOU in the last 12 months about or concerning PLAINTIFF.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

Defendant objects to this request on the grounds that that it is vague, ambiguous, burdensome, overbroad and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control that relate to the subject matter of the Complaint and the Cross-Complaint.

REQUEST FOR PRODUCTION NO. 7:

All DOCUMENTS relating to YOUR offer to purchase PLAINTIFF's interest in NEWN on or about March 26, 2007.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

Defendant objects to this request on the grounds that the undefined term "offer" calls for a legal conclusion. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 8:

All DOCUMENTS relating to NEWN's offer to purchase PLAINTIFF's interest in NEWN on or about March 26, 2007.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8

Defendant objects to this request on the grounds that the undefined term "offer" calls for a legal conclusion. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 9:

All DOCUMENTS relating to PLAINTIFF's acceptance of YOUR offer to purchase her interest in NEWN on or about March 26, 2007.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

Defendant objects to this request on the grounds that the undefined term "acceptance" calls for a legal conclusion. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 10:

All DOCUMENTS relating to PLAINTIFF's acceptance of NEWN's offer to purchase her interest in NEWN on or about March 26, 2007.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

Defendant objects to this request on the grounds that the undefined term "acceptance" calls for a legal conclusion. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 11:

All DOCUMENTS relating to NEWN's tax returns and records for the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

Defendant objects to this request on the grounds that this request violates the taxpayer privilege. Defendant will not produce documents responsive to this request.

REQUEST FOR PRODUCTION NO. 12:

All DOCUMENTS relating to TCLE's tax returns and records for the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

Defendant objects to this request on the grounds that this request violates the taxpayer privilege. Defendant will not produce documents responsive to this request.

REQUEST FOR PRODUCTION NO. 13:

All DOCUMENTS relating to YOUR books and records for the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

Defendant objects to this request on the grounds that the request is overbroad, burdensome and not reasonably calculated to lead to discoverable information. Defendant will not produce documents responsive to this request.

REQUEST FOR PRODUCTION NO. 14:

All DOCUMENTS relating to TCLE's books and records for the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14

Defendant objects to this request on the grounds that documents responsive to this request have already been produced to Plaintiffs. Defendant further objects to this request on the grounds that the request is overbroad, burdensome and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents not previously produced to Plaintiff within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 15:

All DOCUMENTS relating to NEWN's books and records for the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15

Defendant objects to this request on the grounds that documents responsive to this request have already been produced to Plaintiffs. Defendant further objects to this request on the grounds that the request is overbroad, burdensome and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents not previously produced to Plaintiff within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 16:

All DOCUMENTS concerning or relating to any bank statements or account summaries of NEWN for the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

Defendant objects to this request on the grounds that documents responsive to this request have already been produced to Plaintiffs. Defendant further objects to this request on the grounds that the request is overbroad, burdensome and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents not previously produced to Plaintiff within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 17:

All DOCUMENTS concerning or relating to any bank statements or account summaries of TCLE for the last three years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

Defendant objects to this request on the grounds that documents responsive to this request have already been produced to Plaintiffs. Defendant further objects to this request on the grounds that the request is overbroad, burdensome and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents not previously produced to Plaintiff within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 18:

All DOCUMENTS relating to expense claims submitted to NEWN by PLAINTIFF for reimbursement for the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

Defendant will produce documents responsive to this request.

REQUEST FOR PRODUCTION NO. 19:

All DOCUMENTS relating to expense claims submitted to NEWN by David D. McDonald for reimbursement for the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

Defendant objects to this request on the grounds that it is overbroad, burdensome, and not reasonably calculated to lead to discoverable information as this request does not relate to the allegations contained in the Complaint or Cross-Complaint. Defendant will not produce documents responsive to this request.

REQUEST FOR PRODUCTION NO. 20:

All DOCUMENTS relating to expense claims submitted to NEWN by Donna K. McDonald for reimbursement for the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20:

Defendant objects to this request on the grounds that it is overbroad, burdensome, and not reasonably calculated to lead to discoverable information as this request does not relate to the allegations contained in the Complaint or Cross-Complaint. Defendant will not produce documents responsive to this request.

REQUEST FOR PRODUCTION NO. 21:

All DOCUMENTS relating to expense claims submitted to TCLE by PLAINTIFF for reimbursement for the last three years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

Defendant will produce documents responsive to this request.

REQUEST FOR PRODUCTION NO. 22:

All DOCUMENTS relating to expense claims submitted to TCLE by David D. McDonald for reimbursement for the last three years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22:

Defendant objects to this request on the grounds that it is overbroad, burdensome, and not reasonably calculated to lead to discoverable information as this request does not relate to the allegations contained in the Complaint or Cross-Complaint. Defendant will not produce documents responsive to this request.

REQUEST FOR PRODUCTION NO. 23:

All DOCUMENTS relating to expense claims submitted to TCLE by Donna K. McDonald for reimbursement for the last three years

RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

Defendant objects to this request on the grounds that it is overbroad, burdensome, and not reasonably calculated to lead to discoverable information as this request does not relate to the allegations contained in the Complaint or Cross-Complaint. Defendant will not produce documents responsive to this request.

REQUEST FOR PRODUCTION NO. 24:

All DOCUMENTS relating to expenses charged to the NEWN company credit card by PLAINTIFF or any other person over the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 24:

Defendant objects to this request on the grounds that it is overbroad, burdensome, and not reasonably calculated to lead to discoverable information as this request does not relate to the allegations contained in the Complaint or Cross-Complaint. Defendant will not produce documents responsive to this request.

REQUEST FOR PRODUCTION NO. 25:

All DOCUMENTS relating to any payments made by NEWN to PLAINTIFF in the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 25:

Defendant will produce documents responsive to this request.

1 **REQUEST FOR PRODUCTION NO. 26:**

2 All DOCUMENTS relating to any payments made by NEWN to David D. McDonald in the
3 last five years.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

5 Defendant objects to this request on the grounds that it is overbroad, burdensome, and not
6 reasonably calculated to lead to discoverable information as this request does not relate to the
7 allegations contained in the Complaint or Cross-Complaint. Defendant will not produce documents
8 responsive to this request.

9 **REQUEST FOR PRODUCTION NO. 27:**

10 All DOCUMENTS relating to any payments made by NEWN to Donna K. McDonald in the
11 last five years.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

13 Defendant objects to this request on the grounds that it is overbroad, burdensome, and not
14 reasonably calculated to lead to discoverable information as this request does not relate to the
15 allegations contained in the Complaint or Cross-Complaint. Defendant will not produce documents
16 responsive to this request.

17 **REQUEST FOR PRODUCTION NO. 28:**

18 All DOCUMENTS relating to any payments made by TCLE to PLAINTIFF in the last three
19 years.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

21 Defendant will produce documents responsive to this request within Defendant's possession,
22 custody or control.

23 **REQUEST FOR PRODUCTION NO. 29:**

24 All DOCUMENTS relating to any payments made by TCLE to David D. McDonald in the
25 last three years.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

27 Defendant objects to this request on the grounds that it is overbroad, burdensome, and not
28 reasonably calculated to lead to discoverable information as this request does not relate to the

1 allegations contained in the Complaint or Cross-Complaint. Defendant will not produce documents
2 responsive to this request.

3 **REQUEST FOR PRODUCTION NO. 30:**

4 All DOCUMENTS relating to any payments made by TCLE to Donna K. McDonald in the
5 last three years.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 30:**

7 Defendant objects to this request on the grounds that it is overbroad, burdensome, and not
8 reasonably calculated to lead to discoverable information as this request does not relate to the
9 allegations contained in the Complaint or Cross-Complaint. Defendant will not produce documents
10 responsive to this request.

11 **REQUEST FOR PRODUCTION NO. 31:**

12 All DOCUMENTS relating to YOUR allegations that PLAINTIFF made false and duplicative
13 reimbursement expense requests.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 31:**

15 Defendant objects to this request on the ground that it calls for a legal conclusion. Defendant
16 further objects on the ground that the request is vague, ambiguous, and overly broad. Subject to and
17 without waiving the foregoing objection, Defendant will produce documents responsive to this
18 request within Defendant's possession, custody and control.

19 **REQUEST FOR PRODUCTION NO. 32:**

20 All DOCUMENTS relating to NEWN's patent applications pending with the USPTO.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 32:**

22 Defendant will produce documents responsive to this request within Defendant's possession,
23 custody and control.

24 **REQUEST FOR PRODUCTION NO. 33:**

25 All DOCUMENTS relating to TCLE's patent applications pending with the USPTO

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 33:**

27 Defendant will produce documents responsive to this request within Defendant's possession,
28 custody and control.

1 **REQUEST FOR PRODUCTION NO. 34:**

2 All DOCUMENTS reflecting the projected value of the patent as alleged in paragraph 23 of
3 the Cross-Complaint.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 34:**

5 Defendant objects to this request on the grounds that it is vague and ambiguous with regard
6 to the undefined term "projected value". Subject to and without waiving the foregoing objection,
7 Defendant will produce documents responsive to this request within Defendant's possession, custody
8 and control.

9 **REQUEST FOR PRODUCTION NO. 35:**

10 All DOCUMENTS reflecting any expenses incurred as a result of the patent application
11 process.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 35:**

13 Defendant will produce documents responsive to this request within Defendant's possession,
14 custody and control.

15 **REQUEST FOR PRODUCTION NO. 36:**

16 All DOCUMENTS and recorded statements provided to NEWN's accountants over the last
17 five years.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 36:**

19 Defendant objects to this request on the grounds that this request violates the taxpayer
20 privilege. Defendant further objects to this request on the grounds that documents responsive to this
21 request have previously been provided to Plaintiffs. Subject to and without waiving the foregoing
22 objection, Defendant will produce documents responsive to this request that have not been previously
23 produced and that do not violate the taxpayer privilege.

24 **REQUEST FOR PRODUCTION NO. 37:**

25 All DOCUMENTS and recorded statements provided to TCLE's accountants over the last
26 three years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 37:

Defendant objects to this request on the grounds that this request violates the taxpayer privilege. Defendant further objects to this request on the grounds that documents responsive to this request have previously been provided to Plaintiffs. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request that have not been previously produced and that do not violate the taxpayer privilege.

REQUEST FOR PRODUCTION NO. 38:

All tax returns, tax schedules, and other related DOCUMENTS filed by or on behalf of NEWN for the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 38:

Defendant objects to this request on the grounds that this request violates the taxpayer privilege. Defendant will produce documents responsive to this request that have not been previously produced and that do not violate the taxpayer privilege.

REQUEST FOR PRODUCTION NO. 39:

All DOCUMENTS reflecting any amendments or modifications to the NEWN Operating Agreement or Articles of Incorporation.

RESPONSE TO REQUEST FOR PRODUCTION NO. 39:

Defendant objects to this request on the grounds that is vague and ambiguous with regard to the undefined terms "amendments" and "modifications". Subject to and without waiving the foregoing objections, Defendant will produce documents responsive to this request within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 40:

All DOCUMENTS relating to the governance of NEWN.

RESPONSE TO REQUEST FOR PRODUCTION NO. 40:

Defendant objects to this request on the grounds that is vague and ambiguous with regard to the undefined term "governance". Subject to and without waiving the foregoing objections, Defendant will produce documents responsive to this request within Defendant's possession, custody and control.

1 **REQUEST FOR PRODUCTION NO. 41:**

2 All DOCUMENTS concerning or relating to the business plans of NEWN for the last five
3 years.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 41:**

5 Defendant objects to this request on the grounds that is vague and ambiguous with regard to
6 the undefined term "business plans". Subject to and without waiving the foregoing objections,
7 Defendant will produce documents responsive to this request within Defendant's possession, custody
8 and control.

9 **REQUEST FOR PRODUCTION NO. 42:**

10 All DOCUMENTS concerning ore relating to the business plans of TCLE for the last five
11 years.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 42:**

13 Defendant objects to this request on the grounds that is vague and ambiguous with regard to
14 the undefined term "business plans". Subject to and without waiving the foregoing objections,
15 Defendant will produce documents responsive to this request within Defendant's possession, custody
16 and control.

17 **REQUEST FOR PRODUCTION NO. 43:**

18 All DOCUMENTS relating to the governance of the TCLE.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 43:**

20 Defendant objects to this request on the grounds that is vague and ambiguous with regard to
21 the undefined term "governance". Subject to and without waiving the foregoing objections,
22 Defendant will produce documents responsive to this request within Defendant's possession, custody
23 and control.

REQUEST FOR PRODUCTION NO. 44:

All DOCUMENTS concerning or relating to any defamatory statements allegedly made by PLAINTIFFS about YOU, NEWN or TCLE.

RESPONSE TO REQUEST FOR PRODUCTION NO. 44:

Defendant objects to this request on the grounds that it is vague, ambiguous and overly broad. Defendant further objects to the phrase "defamatory statements" on the ground that it calls for a legal conclusion. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 45:

All DOCUMENTS identified in response to special interrogatories 2, 6, 9, 11, 15, 17, 21.

RESPONSE TO REQUEST FOR PRODUCTION NO. 45:

Defendant objects to this request on the grounds that it is vague, ambiguous and overly broad. Subject to and without waiving this objection or the objections in response to special interrogatories 2, 6, 9, 11, 15, 17, 21, Defendant will produce documents responsive to this request within Defendant's possession, custody and control.

REQUEST FOR PRODUCTION NO. 46:

All DOCUMENTS pertaining to PLAINTIFF's 401K plan with NEWN.

RESPONSE TO REQUEST FOR PRODUCTION NO. 46:

Defendant objects to this request on the grounds that that it is vague, ambiguous, burdensome, overbroad, and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control that relate to the subject matter of the Complaint and the Cross-Complaint.

REQUEST FOR PRODUCTION NO. 47:

All DOCUMENTS pertaining to PLAINTIFF's 401K plan with TCLE.

RESPONSE TO REQUEST FOR PRODUCTION NO. 47:

Defendant objects to this request on the grounds that that it is vague, ambiguous, burdensome, overbroad, and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control that relate to the subject matter of the Complaint and the Cross-Complaint.

REQUEST FOR PRODUCTION NO. 48:

All DOCUMENTS pertaining to PLAINTIFF's Profit Sharing Plan with NEWN.

RESPONSE TO REQUEST FOR PRODUCTION NO. 48:

Defendant objects to this request on the grounds that that it is vague, ambiguous, burdensome, overbroad, and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control that relate to the subject matter of the Complaint and the Cross-Complaint.

REQUEST FOR PRODUCTION NO. 49:

All DOCUMENTS pertaining to PLAINTIFF's Profit Sharing Plan with TCLE.

RESPONSE TO REQUEST FOR PRODUCTION NO. 49:

Defendant objects to this request on the grounds that that it is vague, ambiguous, burdensome, overbroad, and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control that relate to the subject matter of the Complaint and the Cross-Complaint.

REQUEST FOR PRODUCTION NO. 50:

All DOCUMENTS relating to any consulting agreements or services provided to NEWN.

RESPONSE TO REQUEST FOR PRODUCTION NO. 50:

Defendant objects to this request on the grounds that that it is vague, ambiguous, burdensome, overbroad, and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control that relate to the subject matter of the Complaint and the Cross-Complaint.

REQUEST FOR PRODUCTION NO. 51:

All DOCUMENTS relating to any consulting agreements or services provided to TCLE.

RESPONSE TO REQUEST FOR PRODUCTION NO. 51:

Defendant objects to this request on the grounds that that it is vague, ambiguous, burdensome, overbroad, and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control that relate to the subject matter of the Complaint and the Cross-Complaint.

REQUEST FOR PRODUCTION NO. 52:

All DOCUMENTS relating to any payments made by NEWN for consulting services in the last five years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 52:

Defendant objects to this request on the grounds that that it is vague, ambiguous, burdensome, overbroad, and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control that relate to the subject matter of the Complaint and the Cross-Complaint.

REQUEST FOR PRODUCTION NO. 53:

All DOCUMENTS relating to any payments made by TCLE for consulting services in the last three years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 53:

Defendant objects to this request on the grounds that that it is vague, ambiguous, burdensome, overbroad, and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendant will produce documents responsive to this request within Defendant's possession, custody and control that relate to the subject matter of the Complaint and the Cross-Complaint.

Dated: October 9, 2007.

GREENBERG TRAURIG, LLP

By: Cindy Hamilton / ang
William J. Goines
Karen Rosenthal
Cindy Hamilton

Attorneys for Defendants and Cross-Complainants
David McDonald, Donna McDonald, National
Expert Witness Network. and Technology CLE

Osbelt v. McDonald, et al.

Case No. CIV 463528

PROOF OF SERVICE

I, Cathy Sandifer, declare that I am a citizen of the United States, over the age of eighteen years and not a party to the within action. I am an employee of GREENBERG TRAURIG, LLP, and my business address is 1900 University Avenue, Fifth Floor, East Palo Alto, CA 94303. On October 9, 2007, I served the following documents:

DEFENDANT DONNA MCDONALD'S OBJECTION TO SECOND AMENDED NOTICE OF DEPOSITION AND REQUEST FOR PRODUCTION OF DOCUMENTS

☒ by transmitting via **FACSIMILE** the document(s) listed above to the fax numbers) set forth below, or as stated on the attached service list, on this date at approximately _____, from the sending facsimile machine telephone number of 650-289-7893. The transmission was reported as complete and without error by the machine. Pursuant to California Rules of Court, Rule 2008(e)(4), I caused the machine to print a transmission record of the transmission, a copy of which is attached to the original of this declaration. The transmission report was properly issued by the transmitting facsimile machine.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the **UNITED STATES MAIL** at East Palo Alto, California, addressed as set forth below.


☐ by **OVERNIGHT MAIL** by placing the document(s) listed above in a sealed overnight mail envelope with postage thereon fully prepaid, addressed as set forth below.

☐ **(BY MESSENGER PERSONAL SERVICE)**. I caused delivery of such envelope by hand via courier service to the offices of the addressee.

Joseph W. Cotchett, Esq.
Cotchett, Pitre & McCarthy
840 Malcolm Rd., Ste. 200
Burlingame, CA 94010
Fax No. (650) 697-0577

I am readily familiar with the business practice of my place of employment in respect to the collection and processing of correspondence, pleadings and notices for mailing with United States Postal Service/Express Mail, Federal Express and other overnight mail services. The foregoing sealed envelope was placed for collection and mailing this date consistent with the ordinary business practice of my place of employment, so that it will be picked up this date with postage thereon fully prepaid at East Palo Alto, California, in the ordinary course of such business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 9, 2007, at East Palo Alto, California.



Cathy Sandifer

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SAN FRANCISCO AIRPORT OFFICE CENTER
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FILE COPY

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OF COUNSEL
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NEW YORK OFFICE
100 PARK AVENUE, SUITE 2600
NEW YORK, NY 10017
(212) 682-3198

October 15, 2007

Cindy Hamilton
GREENBERG TRAURIG, LLP
1900 University Avenue, Fifth Floor
East Palo Alto CA 94303

Re: *Osbelt v. McDonald, et al.*, Case No. CIV 463528

Re: Defendants' Objections to Second Amended Notice of Deposition and Request for Production of Documents

Dear Cindy:

We received defendants' document productions late last week and have compared it to their objections to the document production request. The objections are not well-taken. Unless defendants intend to seek a protective order, plaintiff expects defendants to produce the requested documents and be prepared to testify on all relevant matters at their depositions.

Defendants have refused to produce the tax records for NEWN and TCLE, mistakenly asserting taxpayer privilege. (Defendants' responses to requests 11, 12, 36-38.) Plaintiff Jennifer Osbelt is a member and manager of both LLCs. The taxpayer privilege does not apply to her. The objection is without basis.

Defendants also have refused to produce expenses that they billed to NEWN and TCLE, erroneously and nonsensically asserting that the request is "not reasonably calculated to lead to discoverable information." (Defendants' responses to requests 19, 20, 22-24.) Likewise, Defendants have refused to produce documents concerning payments made by NEWN and TCLE to them. (Defendants' responses to requests 26-30.) The information sought is relevant and "reasonably calculated to lead to discovery of admissible evidence." Plaintiff has brought claims against Defendants for, *inter alia*, Accounting and Breach of Fiduciary Duty. She has alleged, *inter alia*, that Defendants have falsely allocated profits and misappropriated company funds. The information sought bears on these claims and allegations.

Lastly, based on Defendants' objections, it is unclear what documents have been produced, what documents have been withheld and what documents they still intend to produce.

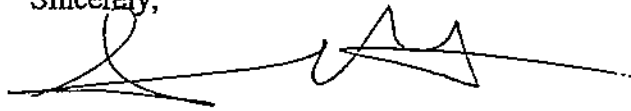
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COTCHETT, PITRE & MCCARTHY

Cindy Hamilton
GREENBERG TRAURIG, LLP
October 15, 2007
Page 2

(Defendants' responses to requests 11, 12, 15-17, 22-24, 26-30, 36-38.) Plaintiff's position is and has always been that, as a member and manager of both the LLCs, she is entitled to all access and copies of all books and records and all accountant information. To the extent that defendants persist in denying Ms. Osbelt her right to these records and information, she requests that defendants produce a privilege log of all items withheld and an itemization of all items produced to date.

Your prompt attention to these matters is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sean E. Ponist', with a long horizontal line extending to the right.

Sean E. Ponist

cc: William Goines
Ara Jabaghourian

*** TX REPORT ***

TRANSMISSION OK

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CONNECTION ID
ST. TIME 10/16 09:09
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PGS. SENT 3
RESULT OK

*letter mailed
also on 10/15/07.*

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840 Malcolm Rd., Suite 200

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Telephone: 650/697-6000

Telecopiers: 650/697-0577

692-3606 ♦ 692-1112

DATE: **October 16, 2007**

PAGES: **3 (including this page)**

TO: **CINDY HAMILTON 650-328-8508**
Greenberg Traurig

CC: **WILLIAMS GOINES 650-328-8508**
Greenberg Traurig

FROM: **SEAN POWERS**
STEVEN N. WILLIAMS

RE: **Osbelt v. McDonald, et al.**

COMMENTS: **Please see the attached.**

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OF COUNSEL
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NEW YORK, NY 10017
(212) 682-3198

November 3, 2007

BY FAX

Cindy Hamilton
GREENBERG TRAURIG, LLP
1900 University Avenue, Fifth Floor
East Palo Alto CA 94303

Re: *Osbelt v. McDonald, et al.*, Case No. CIV 463528
(Defendants' Failure to Produce Responsive Documents)

Dear Cindy:

On October 15, 2007, plaintiff drafted a meet and confer regarding defendants' failure to produce tax records for NEWN and TCLE (Deposition Requests for Production ("DRFD") 11, 12, 36-38; Request for Production served August 1, 2007 ("RFP") 9, 35-37), failure to produce payment and expense information, including, but not limited to, consulting fees charged to NEWN and TCLE (DRFP 19, 20, 22, 23, 26, 27, 29, 30, 50-53; RFP 14, 15, 17, 18, 21, 22, 24, 25), failure to produce documents on the basis that defendants allegedly provided them to plaintiff previously (DRFP 14-17; RFP 10-12; RFP 14-17), and failure to provide a privilege log or otherwise clearly indicate what documents are being withheld from production.¹

At defendants' depositions that same week, you and Mr. Goines indicated that defendants would withdraw their objections and produce these items. Subsequently, I have followed up with your office on October 24, 2007 and November 1, 2007 regarding these items, receiving assurances that they will be provided. Yet, as of today, plaintiff still has not received responsive documents as promised. So that we may avoid motion practice, please provide all responsive documents no later than November 9, 2007.

¹Furthermore, none of the NEWN's and TCLE's 401k plan and profit sharing documents have been produced despite defendants' agreement to produce them (DRFP 46-49).

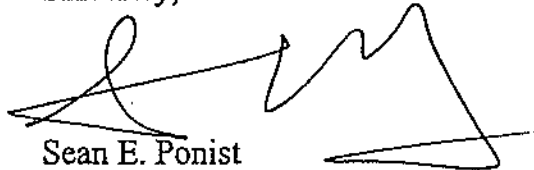
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COTCHETT, PITRE & MCCARTHY

Cindy Hamilton
GREENBERG TRAURIG, LLP
November 3, 2007
Page 2

Note that defendants' depositions also demonstrated that they failed to produce documents as maintained in the normal course of business or organized by category in response to plaintiff's requests for production. As such, the production fails to comply with the code of civil procedure. Please correct this defect in your production as well.

Sincerely,



Sean E. Ponist

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO	3288	
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SUBADDRESS		
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ST. TIME	11/03 13:26	
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RESULT	OK	

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692-3606 ♦ 692-1112

DATE: **November 3, 2007**

PAGES: **3 (including this page)**

TO: **CINDY HAMILTON 650-328-8508**
Greenberg Traurig

FROM: **SEAN E. PONIST**

RE: **Osbelt v. McDonald, et al.**

COMMENTS: **Please disregard previous letter as the
date to respond was incorrect.**

ORIGINAL TO FOLLOW: **Fax only**

EXHIBIT G

LAW OFFICES
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NEW YORK OFFICE
100 PARK AVENUE, SUITE 2600
NEW YORK, NY 10017
(212) 682-3198

November 3, 2007

BY FAX

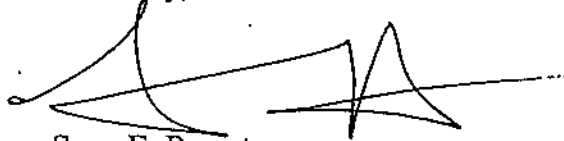
Cindy Hamilton
GREENBERG TRAURIG, LLP
1900 University Avenue, Fifth Floor
East Palo Alto CA 94303

Re: *Osbelt v. McDonald, et al.*, Case No. CIV 463528
(Further Deposition of the McDonalds)

Dear Cindy:

The depositions of Mr. McDonald and Mrs. McDonald, taken on October 17th and October 18th, were adjourned with the understanding that your office would provide further dates for deposition. Having not received dates, I followed up with your office on October 24, 2007 and November 1, 2007. Yet, as of today, we still have not received dates for their depositions. Please provide dates for further deposition by the end of this coming week. Note that any responsive documents not previously produced, should be produced by November 9, 2007 and well in advance of any proposed deposition dates.

Sincerely,



Sean E. Ponist

Greenberg Traurig

Cindy Hamilton
Tel. 650.288.7859
Fax 650.482.7859
hamiltonc@gtlaw.com

November 9, 2007

Sean Ponist, Esq.
Cotchett, Pitre & McCarthy
840 Malcolm Rd., Ste. 200
Burlingame, CA 94010

Re: Osbelt v. McDonald, et al.

Dear Sean:

We are in receipt of your meet and confer letters dated November 3, 2007. Defendants responded to your previous October 15, 2007 meet and confer letter by producing original and amended tax returns on October 26, 2007. These documents were bates stamped NEWN 01020-01252.

During the course of the depositions of Dave McDonald and Donna McDonald, you requested a backup for the various loans made by the McDonalds to National Expert Witness Network, Inc. ("NEWN") from the inception of the company. Much of this information has been provided to your client over the course of their relationship, however, the McDonalds have gone back through their records and were able to locate these documents. We are currently in the process of redacting bank account information but we will have these documents to produce to you next week.

Your Request for Production of Documents to our clients also requested QuickBook files. You declined our offer to access the QuickBook files online through NEWN's accountant, requesting instead that we produce hard copies of the QuickBooks records. As we have since discussed telephonically, QuickBooks is an interactive computer software program and you have to input into the program the specific information you are seeking. To give you an example of how QuickBooks is set up I am attaching a print-out with examples of the vast file menus found in QuickBooks. Please articulate exactly what information you are seeking, preferably after discussing the issue with someone familiar with Quickbooks.

Our clients are in the process of gathering documents reflecting consulting fees charged to NEWN. We are also still preparing a privilege log and expect to produce both of these items to you next week.

ALBANY
AMSTERDAM
ATLANTA
BOCA RATON
BOSTON
CHICAGO
DALLAS
DENVER
FORT LAUDERDALE
LOS ANGELES
MIAMI
NEW JERSEY
NEW YORK
ORANGE COUNTY, CA
ORLANDO
PHILADELPHIA
PHOENIX
SILICON VALLEY
TALLAHASSEE
TYSONS CORNER
WASHINGTON, D.C.
WEST PALM BEACH
WILMINGTON
ZURICH

Sean Ponist, Esq.
November 9, 2007
Page 2

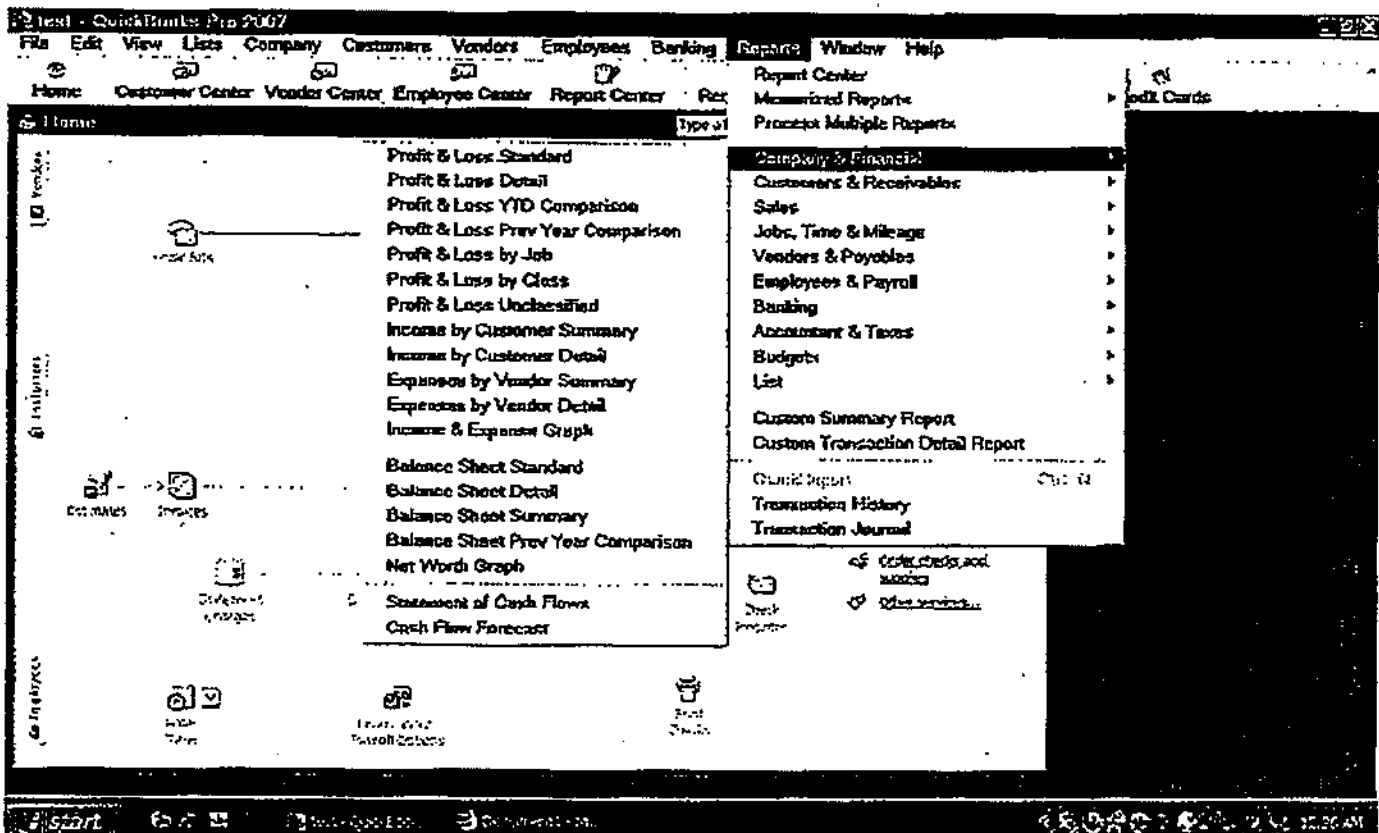
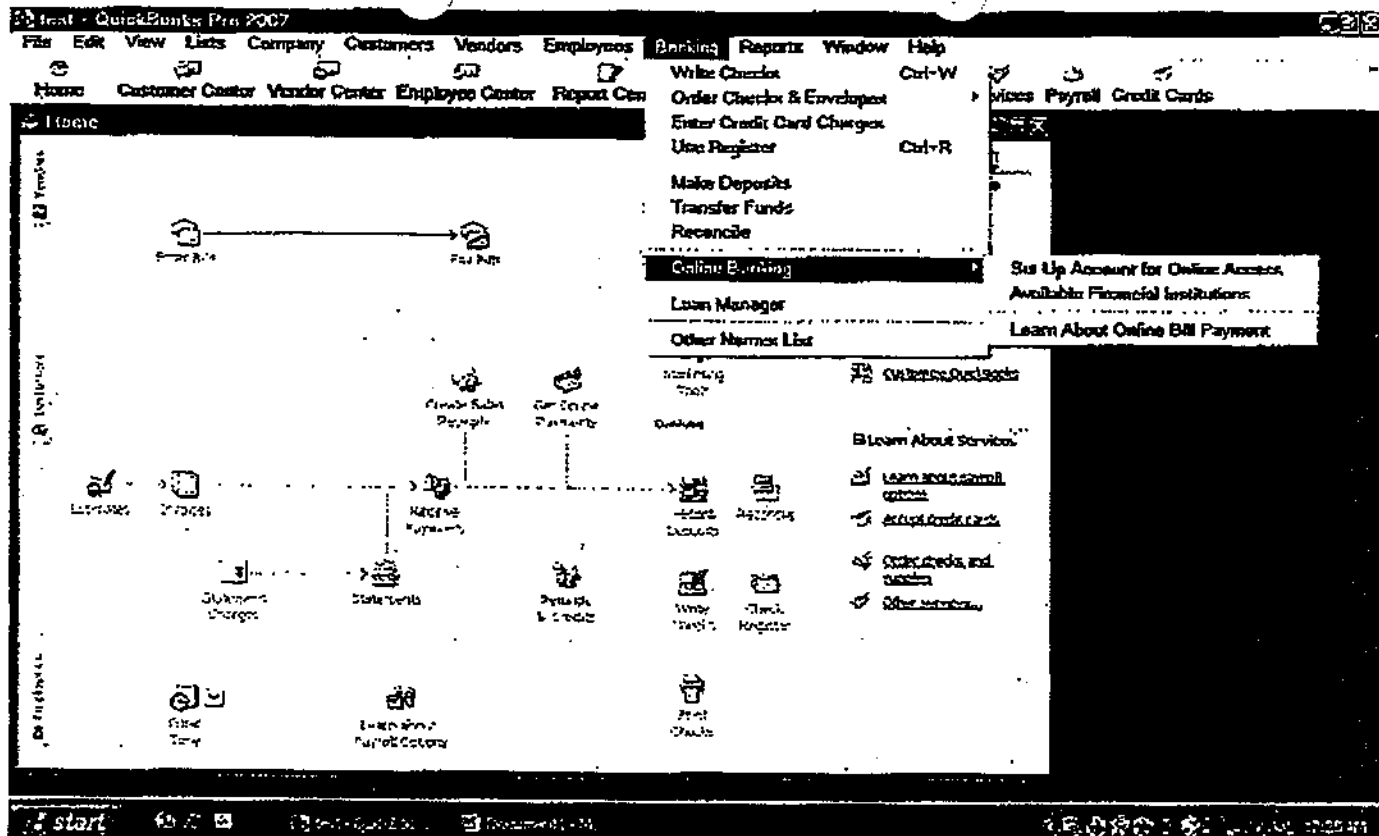
Regarding the deposition of Jennifer Osbelt and the continued deposition of Dave and Donna McDonald, we would like to set aside one week when we can complete all of these depositions on consecutive days. Please check your client's availability and let me know as Dave and Donna are basically local and have availability.

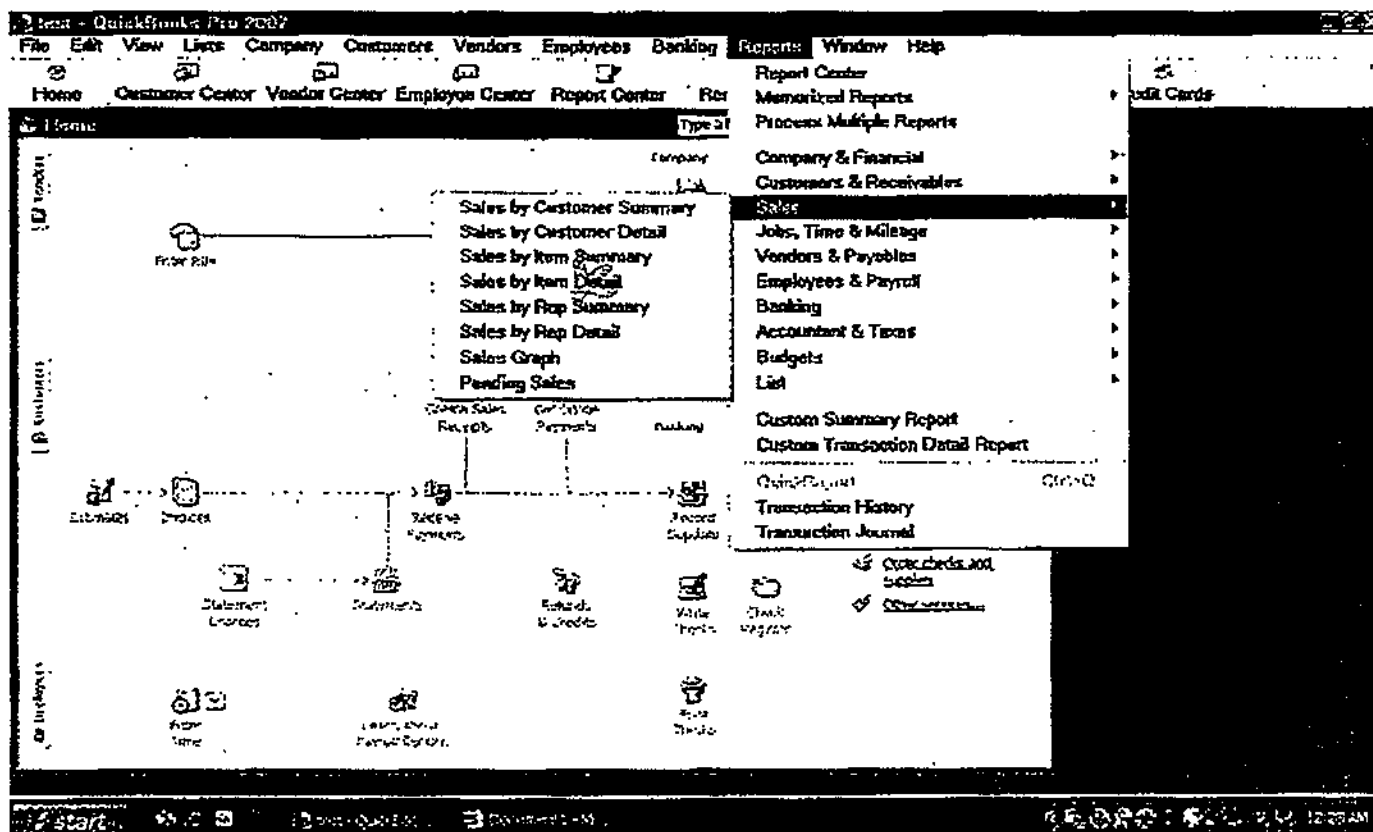
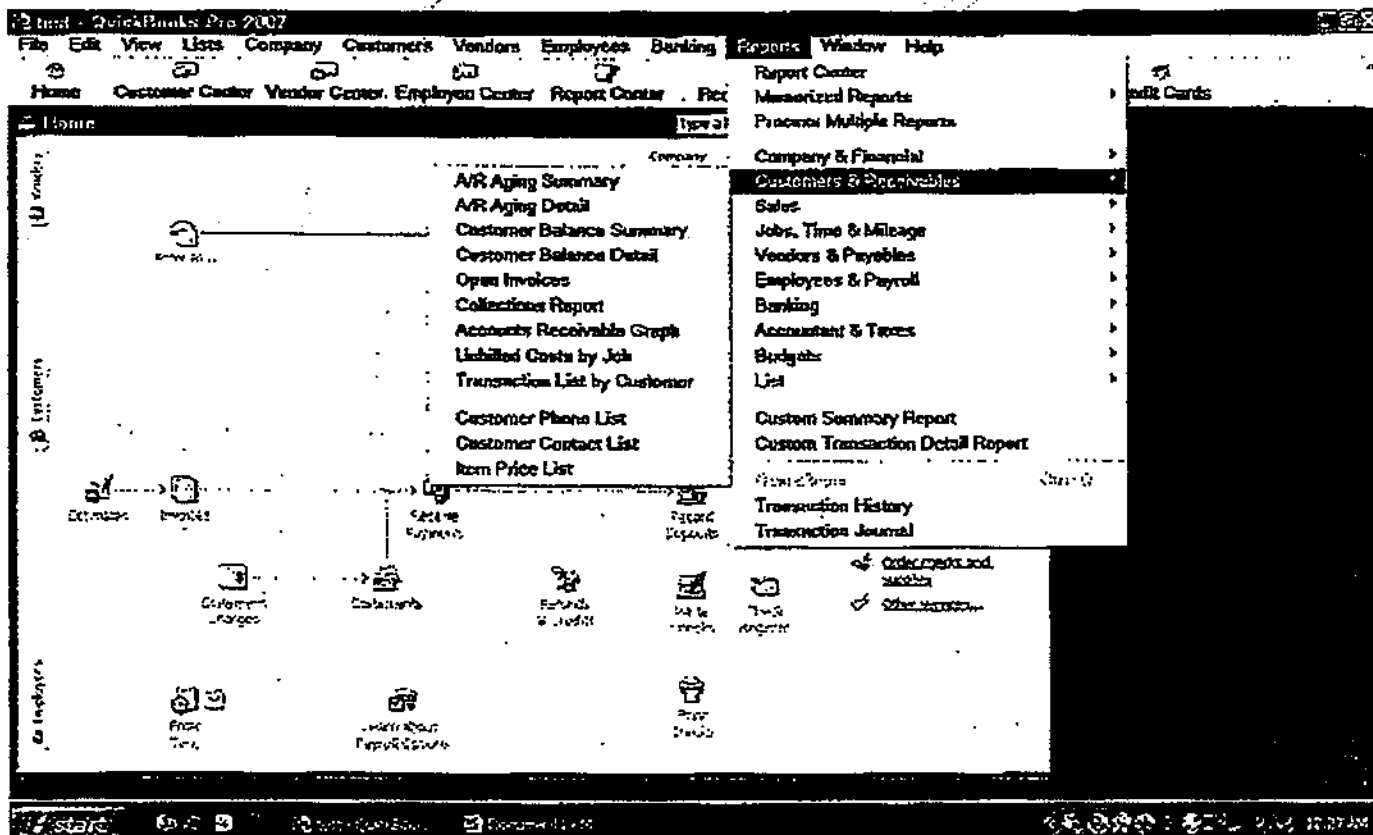
Very truly yours,

A handwritten signature in cursive script that reads "Cindy Hamilton".

Cindy Hamilton

Encl.





JOSEPH C. COTCHETT (#168009)
ARA R. JABAGCHOURIAN (#205777)
SEANE E. PONIST (#204712)
COTCHETT, PITRE & McCARTHY
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO**

JENNIFER OSBELT,

Plaintiff,

v.

DAVID D. McDONALD, DONNA K.
MCDONALD, NATIONAL EXPERT
WITNESS NETWORK, a California Limited
Liability Company, and DOES 1-10, inclusive,

Defendants.

CASE NO. CIV 463528

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS
AND FOR SANCTIONS**

Date: January 15, 2008
Time: 9:00 a.m.
Dept: LM

Trial: May 12, 2008

DAVID D. McDONALD; DONNA K.
MCDONALD; NATIONAL EXPERT
WITNESS NETWORK, a California Limited
Liability Company; TECHNOLOGY CLE, a
California Limited Liability Company,

Cross-Complainants,

v.

JENNIFER OSBELT, individually and doing
business as PALO ALTO TECHNICAL, and
DOES 1-10, inclusive,

Cross-Defendants.

**[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF
DOCUMENTS AND FOR SANCTIONS**

1 On January 11, 2008 at 9:00 a.m., the parties appeared in Department ____ of the
2 Superior Court of California, County of San Mateo, on Plaintiffs' Motion to Compel Production
3 of Documents and for Sanctions. Having read the moving and opposition and papers, and heard
4 argument of counsel, the Court finds that the documents requested are relevant to the subject
5 matter of the action, and Defendants' refusal to provide the information and documents was
6 without substantial justification.

7 IT IS HEREBY ORDERED that:

- 8 1. Defendants shall produce documents responsive to requests 11, 12, 15, 16, 17, 19,
9 20, 22-30, 36, 37, 43, 46-49, 52, and 53 no later January 25, 2007;
10 2. Defendants shall pay \$2,750.00 to Plaintiff for attorney fees and costs incurred in
11 bringing this motion.

12
13 IT IS SO ORDERED.

14
15 DATED: January __, 2008

By: _____
JUDGE OF THE SUPERIOR COURT

Jennifer Osbelt, v. David D. McDonald, Donna K. McDonald, et al.
 San Mateo Superior Court CIV 463528

PROOF OF SERVICE

I am employed in San Mateo County, which is where service of the document(s) referred to below occurred. I am over the age of 18 and not a party to the within action. My business address is Cotchett, Pitre & McCarthy, San Francisco Airport Center, 840 Malcolm Road, Suite 200, Burlingame, California 94010. I am readily familiar with Cotchett, Pitre & McCarthy's practices for the service of documents. On this date, I served a true copy of the following document(s) in the manner listed below:

**[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL
 PRODUCTION OF DOCUMENTS AND FOR SANCTIONS**

BY MAIL: I am readily familiar with this firm's practice for collection and processing of correspondence for mailing. Following that practice, I placed a true copy of the aforementioned document(s) in a sealed envelope, addressed to each addressee, respectively, as specified below. The envelope was placed in the mail at my business address, with postage thereon fully prepaid, for deposit with the United States Postal Service on that same day in the ordinary course of business.

XXX BY HAND DELIVERY: I am readily familiar with this firm's practice for causing documents to be served by hand delivery. Following that practice, I caused the sealed envelope containing the aforementioned document(s) to be hand delivered to the addressee(s) specified below.

William J. Goines

Karen Rosenthal

Cindy Hamilton

GREENBERG TRAURIG, LLP

1900 University Avenue, Fifth Floor

East Palo Alto, CA 94303

Tel.: (650) 328-8500

Fax: (650) 328-8508

BY OVERNIGHT COURIER SERVICE: I am readily familiar with this firm's practice for causing documents to be served by overnight courier. Following that practice, I caused the sealed envelope containing the aforementioned document(s) to be delivered via overnight courier service to the addressee(s) specified below:

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Burlingame, California, on December 18, 2007.


 Maybelle Munda-Dominguez

92

JOSEPH W. COTCHETT (#36324)
jcotchett@cpmlegal.com
ARA R. JABAGCHOURIAN (#205777)
ajabagchourian@cpmlegal.com
SEAN E. PONIST (#204712)
sponist@cpmlegal.com
COTCHETT, PITRE & MCCARTHY
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577

Attorneys for Plaintiff Jennifer Osbelt

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

JENNIFER OSBELT,

Plaintiff,

v.

DAVID D. McDONALD, DONNA K.
McDONALD, NATIONAL EXPERT
WITNESS NETWORK, a California
Limited Liability Company, and DOES 1-
10, inclusive,

Defendants.

DAVID D. McDONALD; DONNA K.
McDONALD; NATIONAL EXPERT
WITNESS NETWORK, a California
Limited Liability Company;
TECHNOLOGY CLE, a
California Limited Liability Company,

Cross-Complainants,

v.

JENNIFER OSBELT, individually and
doing business as PALO ALTO
TECHNICAL, and ROES 1-10, inclusive,

Cross-Defendants.

Case No. CIV463528

**PLAINTIFF'S OPPOSITION TO MOTION
TO COMPEL RESPONSES TO
DEFENDANTS' REQUEST FOR
PRODUCTION OF DOCUMENTS AND
MOTION FOR SANCTIONS**

Hearing Date: January 11, 2008
Hearing Time: 9:00 a.m.
Department: LM

Trial: May 12, 2008

**PLAINTIFF'S OPPOSITION TO MOTION TO COMPEL RESPONSES TO DEFENDANTS' REQUEST
FOR PRODUCTION OF DOCUMENTS AND MOTION FOR SANCTIONS**

1 **I. INTRODUCTION**

2 Defendant David McDonald (hereinafter "Defendant") has painted a picture which is both
 3 inaccurate and incorrect as a matter of law. Defendant's motion is based on two points - 1) that
 4 no documents have been produced; and 2) they are entitled to every financial document of Palo
 5 Alto Technical. The first point is just patently false. Plaintiff Jennifer Osbelt has produced 1099
 6 pages of documents and will be sending an additional 1112 pages of electronic documents, plus
 7 52 files of data, by December 31, 2007. The second point - obtaining the tax records and the
 8 books and records of Palo Alto Technical - is a violation of the right of privacy, invasion of the
 9 tax payer privilege and seeks to obtain pretrial discovery of Palo Alto Technical in violation of
 10 California Civil Code section 3295. Plaintiff has amended her response to provide information
 11 of reimbursements made by National Expert Witness Network LLC ("NEWN") to Palo Alto
 12 Technical. Based on the facts and the law below, Defendant's motion should be denied in its
 13 entirety.

14 **II. FACTUAL BACKGROUND**

15 **A. Case Facts**

16 Plaintiff filed suit against Defendant David McDonald and his wife Donna McDonald.
 17 All three were members of NEWN. Back in March of 2006, Plaintiff discovered related party
 18 transactions between NEWN and David McDonald and Donna McDonald related to several
 19 loans. When Plaintiff questioned about it, Defendant became irate and wanted Plaintiff out of
 20 NEWN. So he offered to buy her out for \$1.8 million dollars. Plaintiff accepted the written offer
 21 by signing the form sent to her by Defendant. Defendant then chose to breach the agreement and
 22 refused to pay Plaintiff.

23 Later that month, Plaintiff was on her honeymoon. During that time Defendant and his
 24 wife froze Plaintiff out of NEWN by taking her access away from the files, the building and
 25 essentially preventing her from participating in any business activity of NEWN, which Plaintiff
 26 was a twenty five percent owner of.

27 Since that time, Defendant and his wife have not only froze Plaintiff out of NEWN, they
 28 have also plundered the assets of NEWN by entering into "consulting agreements" with NEWN.

1 That is, in order to avoid paying Plaintiff from any distribution of profits, Defendant and his wife
 2 have arranged it so that they would be paid for doing the same exact thing they have always been
 3 doing, but have characterized it as "consulting agreements." It goes without saying that Plaintiff
 4 was not offered any type of consulting arrangement with NEWN. Since these consulting
 5 arrangements have been created, NEWN has operated at a loss every quarter, where they had
 6 been in the black for a year leading up to the termination of Plaintiff.

7 Defendant brought a cross-complaint against Plaintiff claiming, amongst other things,
 8 that Plaintiff had made improper reimbursement claims of under \$5000 to NEWN. While
 9 Plaintiff was a 25% owner of NEWN, she also operated a business on her own called Palo Alto
 10 Technical, a sole proprietorship. Neither Defendant nor his wife have an interest in Palo Alto
 11 Technical.

12 **B. Discovery Dispute**

13 Defendant has brought this motion seeking to obtain documents and seeking to obtain all
 14 the financial records of Palo Alto Technical. Between December 12 and December 20, 2007,
 15 Plaintiff had produced 1099 pages of documents pursuant to Defendant's request. (Declaration
 16 of Ara Jabaghourian In Support of Plaintiff's Opposition to Motion to Compel Responses
 17 ("Jabaghourian Decl."), ¶2) In order to search and obtain the electronic documents, Plaintiff's
 18 counsel had to hire a vendor to search through numerous gigabites of files. (Jabaghourian Decl.,
 19 ¶3) Plaintiff's counsel has reviewed these documents and is now awaiting for its vendor to
 20 provide those documents with Bates labels. These documents will be produced by December 31,
 21 2007 and amount to an additional 1112 pages of documents, plus 34 files of an Excel spreadsheet
 22 and 18 files of data from Quickbooks.

23 When Plaintiff first responded to Defendant's request for all the financial and tax records
 24 of Palo Alto Technical, Plaintiff objected and refused to produce any of the documents based on
 25 the right of privacy and tax payer privilege. However, upon a meet and confer effort on
 26 December 11, 2007, counsel for Plaintiff, Sean Ponist, stated that he will amend his responses to
 27 the document request - which indicate that documents related to reimbursements made to Palo
 28

Alto Technical by NEWN will be produced. (See Hamilton Decl., Exhibit F; Jabaghourian Decl., Exhibit A) Despite this amendment, Defendant rushed to the Court and filed this motion.

III. ARGUMENT

A. The Documents Plaintiff Stated Would Be Produced Have Been Produced

Plaintiff has produced the documents pursuant to the document request. Over one thousand pages of "hard" documents were produced beginning on December 12. (Jabaghourian Decl., ¶ []) After searching several gigabites of electronic documents with the help of a outside vendor, Plaintiff will have produced an additional 1112 pages of electronic documents (plus 52 files of data) by December 31, 2007.

Taking a quick look at the requests Defendant has propounded, nearly all of these documents will be in his, through NEWN, possession, custody and control. On its face, these requests appear to be harassing and the only purpose for them was to drive up the costs of litigation.

B. Palo Alto Technical's Financial Books And Records Are Protected Under The Right Of Privacy

Defendant's request for all of Palo Alto Technical's books, records and tax information violates Jennifer Osbelt's right of privacy. A right of privacy exists as to a party's confidential financial affairs, even when the information sought is admittedly relevant to the litigation. (*Cobb v. Superior Court* (1979) 99 Cal.App.3d 543, 550; *see also* Weil & Brown, CAL.PRAC.GUIDE: CIV. PRO. BEFORE TRIAL (TRG 2007) §8:303) Furthermore, tax information is protected from discovery. (Cal.Rev. & Tax Code § 19542, *Fortunato v. Superior Court* (2003) 114 Cal.App.4th 475, 483; *Webb v. Standard Oil Co.* (1957) 49 Cal.2d 509, 513) Plaintiff has properly made these objections in its responses. (See Jabaghourian Decl., Exhibit A)

Defendant has not shown how all or any of Palo Alto Technical's financial books, records and taxes are directly relevant to this case. Defendant's argument is that some reimbursements were paid out to Palo Alto Technical instead of Jennifer Osbelt. Presumably, NEWN would have a copy of the reimbursement request form, the receipts and the checks it had issued to Palo Alto Technical. Plaintiff agreed to produce any documents related to any reimbursements, to the

1 extent they exist, made to Palo Alto Technical by NEWN. (Jabaghourian Decl., Exhibit A -
2 Amended Response To Request For Production No. 1; Hamilton Declaration, Exhibit F)
3 However, the claim of improper reimbursements does not permit Defendant to now trample over
4 Plaintiff's right to privacy and her privilege as a tax-payer. Furthermore, California Civil Code
5 section 3295 protects parties from pretrial discovery of financial information.

6 The irony in this motion is that Defendant made the same objections when his personal
7 financial information was sought. (See Jabaghourian Decl., Exhibit B -Responses to Demand
8 Nos. 36-37) Apparently, Defendant or his counsel is under the impression that the law applies to
9 him, but not to Plaintiff.


10 **IV. CONCLUSION**

11 Based on the arguments above, Defendant's motion should be denied in its entirety.

12
13 Dated: December 28, 2007

COTCHETT, PITRE & McCARTHY

14
15 By


16 ARA JABAGCHOURIAN
17 Attorneys for Plaintiff
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Jennifer Osbelt, v. David D. McDonald, Donna K. McDonald, et al.
 San Mateo Superior Court CIV 463528

PROOF OF SERVICE

I am employed in San Mateo County, which is where service of the document(s) referred to below occurred. I am over the age of 18 and not a party to the within action. My business address is Cotchett, Pitre & McCarthy, San Francisco Airport Center, 840 Malcolm Road, Suite 200, Burlingame, California 94010. I am readily familiar with Cotchett, Pitre & McCarthy's practices for the service of documents. On this date, I served a true copy of the following document(s) in the manner listed below:

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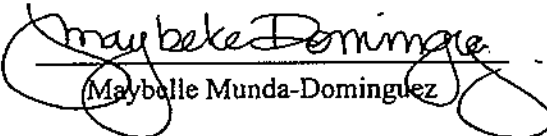
1900 University Avenue, Fifth Floor

East Palo Alto, CA 94303

Tel.: (650) 328-8500

Fax: (650) 328-8508

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Burlingame, California, on December 28, 2007.


 Maybelle Munda-Dominguez

JOSEPH W. COTCHETT (#36324)
jcotchett@cpmlegal.com
ARA R. JABAGCHOURIAN (#205777)
ajabagchourian@cpmlegal.com
SEAN E. PONIST (#204712)
sponist@cpmlegal.com
COTCHETT, PITRE & McCARTHY
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577

Attorneys for Plaintiff Jennifer Osbelt

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

JENNIFER OSBELT,

Plaintiff,

v.

DAVID D. MCDONALD, DONNA K.
MCDONALD, NATIONAL EXPERT
WITNESS NETWORK, a California
Limited Liability Company, and DOES 1-
10, inclusive,

Defendants.

DAVID D. McDONALD; DONNA K.
McDONALD; NATIONAL EXPERT
WITNESS NETWORK, a California
Limited Liability Company;
TECHNOLOGY CLE, a
California Limited Liability Company,

Cross-Complainants,

v.

JENNIFER OSBELT, individually and
doing business as PALO ALTO
TECHNICAL, and ROES 1-10, inclusive,

Cross-Defendants.

Case No. CIV463528

**DECLARATION OF ARA
JABAGCHOURIAN IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO MOTION
TO COMPEL RESPONSES TO
DEFENDANTS' REQUEST FOR
PRODUCTION OF DOCUMENTS AND
MOTION FOR SANCTIONS**

Hearing Date: January 11, 2008
Hearing Time: 9:00 a.m.
Department: LM

Trial: **May 12, 2008**

**DECL. OF ARJ IN SUPPORT OF PLAINTIFF'S OPPOSITION TO MOTION TO COMPEL RESPONSES
TO DEFENDANTS' REQUEST FOR PRODUCTION OF DOCUMENTS AND MOTION FOR
SANCTIONS**

1 I, ARA JABAGCHOURIAN, declares as follows:

2 1. I am an attorney duly licensed and admitted to practice before all courts in the
3 State of California, and am associated with the law firm of Cotchett, Pitre & McCarthy, counsel
4 for Plaintiff Jennifer Osbelt ("Plaintiff") in this action.


5 2. From the time of December 12 through December 20, Plaintiff produced 1099
6 pages of documents pursuant to Defendant David McDonald's ("Defendant") document request.

7 3. Plaintiff, through her counsel, had searched through several gigabites of
8 information in reviewing the electronic documents in her possession. Plaintiff had to hire an
9 outside vendor to process the information in a reviewable form. Plaintiff intends on serving
10 these documents by December 31, 2007, which include 1112 pages of electronic documents plus
11 34 files of an Excel spreadsheet and 18 files of an accounting program called Quickbooks.

12 4. Attached hereto as Exhibit A is a true and correct copy of Plaintiff's Amended
13 Responses to Defendants' Request for Production of Documents, Set One served on December
14 11, 2007. Plaintiff's counsel notified Defendant's counsel that the amended responses were
15 forthcoming, however, she filed this motion anyway and has thus far refused to withdraw it. See
16 Hamilton Declaration, Exhibit F.

17 5. Attached hereto as Exhibit B is a true and correct copy of Defendants' Responses
18 To Plaintiff's Document Request. Responses to requests numbers 36 and 37 claim the tax-payer
19 privilege.
20

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct. Executed this 27th day of December, 2007 at Burlingame,
23 California.
24

25 
26 ARA JABAGCHOURIAN
27
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Jennifer Osbelt, v. David D. McDonald, Donna K. McDonald, et al.
 San Mateo Superior Court CIV 463528

PROOF OF SERVICE

I am employed in San Mateo County, which is where service of the document(s) referred to below occurred. I am over the age of 18 and not a party to the within action. My business address is Cotchett, Pitre & McCarthy, San Francisco Airport Center, 840 Malcolm Road, Suite 200, Burlingame, California 94010. I am readily familiar with Cotchett, Pitre & McCarthy's practices for the service of documents. On this date, I served a true copy of the following document(s) in the manner listed below:

**DECLARATION OF ARA JABAGCHOURIAN IN SUPPORT OF PLAINTIFF'S
 OPPOSITION TO MOTION TO COMPEL RESPONSES TO DEFENDANTS'
 REQUEST FOR PRODUCTION OF DOCUMENTS AND MOTION FOR SANCTIONS**

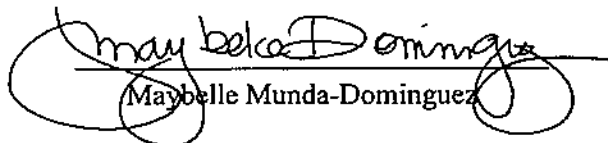
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William J. Goines
 Karen Rosenthal
 Cindy Hamilton
GREENBERG TRAURIG, LLP
 1900 University Avenue, Fifth Floor
 East Palo Alto, CA 94303
 Tel.: (650) 328-8500
 Fax: (650) 328-8508

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Burlingame, California, on December 28, 2007.


 Maybelle Munda-Dominguez

1 JOSEPH W. COTCHETT (SB#36324)
2 jcotchett@cpmlegal.com
3 ARA JABAGCHOURIAN (SB#205777)
4 ajabagchourian@cpmlegal.com
5 SEAN E. PONIST (SB#204712)
6 sponist@cpmlegal.com
7 **COTCHETT, PITRE & MCCARTHY**
8 San Francisco Airport Office Center
9 840 Malcolm Road, Suite 200
10 Burlingame, CA 94010
11 Telephone: (650) 697-6000
12 Facsimile: (650) 697-0577

13 *Attorneys for Plaintiff*

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **IN AND FOR THE COUNTY OF SAN MATEO**

16 JENNIFER OSBELT,

17 Plaintiff,

18 v.

19 DAVID D. McDONALD, DONNA K.
20 McDONALD, and DOES 1-10, inclusive,

21 Defendants.

22 DAVID D. McDONALD; DONNA K.
23 McDONALD; NATIONAL EXPERT
24 WITNESS NETWORK, a California Limited
25 Liability Company; TECHNOLOGY CLE, a
26 California Limited Liability Company,

27 Cross-Complainants,

28 v.

JENNIFER OSBELT, individually and doing
business as PALO ALTO TECHNICAL, and
DOES 1-10, inclusive,

Cross-Defendants.

///

CASE NO. CIV 463528

**PLAINTIFF'S AMENDED
RESPONSES TO DEFENDANTS'
AND CROSS-COMPLAINANTS'
REQUEST FOR PRODUCTION OF
DOCUMENTS, SET ONE**

1 **PROPOUNDING PARTY:** **DEFENDANTS AND CROSS-COMPLAINANTS**
2 **DAVID MCDONALD, DONNA MCDONALD,**
3 **NATIONAL EXPERT WITNESS NETWORK AND**
4 **TECHNOLOGY CLE**

5 **RESPONDING PARTY:** **PLAINTIFF JENNIFER OSBELT**

6 **SET NO.:** **ONE (1)**

7 Pursuant to California Code of Civil Procedure Section 2031.210 *et seq.*, Plaintiff
8 JENNIFER OSBELT hereby provides the following amended responses to the Request for
9 Production of Documents, Set One, dated September 25, 2007, propounded by Defendants and
10 Cross-Complainants DAVID MCDONALD, DONNA MCDONALD, NATIONAL EXPERT
11 WITNESS NETWORK AND TECHNOLOGY CLE as follows:

12 **PRELIMINARY STATEMENT**

13 These responses represent diligent and best efforts to respond to written discovery based
14 upon the investigation which these responding parties have thus far been able to carry out in
15 regard to the facts relevant to this litigation. There may exist further information, documents or
16 discovery that is not within these responding parties' present knowledge or reasonably available
17 to these responding parties.

18 There may exist documents relating to the subject matter of discovery which these
19 responding parties have not yet located, identified or reviewed despite its best efforts to do so.
20 Accordingly, these responses are based upon facts and information which are now known to
21 these responding parties and do not constitute an admission or representation that additional facts
22 or documents relevant to the subject matter of discovery do not exist.

23 As this litigation proceeds, the responding party anticipates that other facts and
24 documents may be discovered and identified by her. Without in any way obligating herself to do
25 so, the responding party reserves the right to later supplement, amend or otherwise modify these
26 responses in any way at any time.

27 Plaintiff objects to the Propounding Parties "Definitions and Instructions" to the extent
28 that they seek to impose any additional duties in responding to these requests beyond that
required by the code of Civil Procedure and any Order of the Court.

AMENDED RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS**REQUEST FOR PRODUCTION NO. 1:**

Palo Alto Technical Expense reimbursements from January 2006 through April 2007.

AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous. Moreover, the request seeks information not relevant or reasonably calculated to lead to the discovery of admissible evidence. Code Civ. Proc. §§ 2017.010, 2017.020. Further, the request seeks information in the possession of the Propounding Party or otherwise equally available to the Propounding Party. See generally, *Alpine Mut. Water Co. v. Sup. Ct.* (1968) 259 Cal.App.2d 45, 53. Plaintiff also objects to this request to the extent it seeks the disclosure of protected, personal financial records and information and violates constitutionally protected privacy rights. See generally, *Cobb v. Sup. Ct.* (1979) 99 Cal.App.3d 543, 550; *Fortunato v. Sup. Ct.* (2003) 114 Cal.App.4th 475, 480; Cal. Const. Art. I, § 1.

Subject to the foregoing objections, Plaintiff will produce all non-privileged responsive documents.

REQUEST FOR PRODUCTION NO. 10:

ALL DOCUMENTS RELATING to the books and records of Palo Alto Technical.

AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous. Moreover, the request seeks information not relevant or reasonably calculated to lead to the discovery of admissible evidence. Code Civ. Proc. §§ 2017.010, 2017.020. Plaintiff also objects to this request to the extent it seeks the disclosure of protected, personal financial records and information. See generally, *Cobb v. Sup. Ct.* (1979) 99 Cal.App.3d 543, 550; *Fortunato v. Sup. Ct.* (2003) 114 Cal.App.4th 475, 480; Cal. Const. Art. I, § 1. Plaintiff further objects to the extent that the request calls for productions of trade secrets. Evid. Code § 1060. Plaintiff also objects to the extent that the request violates the tax payer privilege. See generally, Rev. & Tax Code § 19542; *Webb v. Standard Oil Co.* (1957) 49 Cal.2d 509, 513-514; *Sav-On Drugs, Inc. v. Sup. Ct.* (1975) 15 Cal.3d 1, 7; *Rifkind v. Sup. Ct.* (1981) 123 Cal.App.3d 1045, 1050). Plaintiff

1 additionally objects to the extent that the request violates constitutionally protected privacy rights
 2 (Cal. Const. Art. 1, §1). Plaintiff further objects to this request to the extent that it encompasses
 3 documents protected by the attorney/client communication's privilege and attorney work product
 4 protection. Evid. Code § 954; Code Civ. Proc. §2018 et seq.

5 Subject to the foregoing objections, no documents will be produced responsive to this
 6 request.

7 **REQUEST FOR PRODUCTION NO. 11:**

8 ALL DOCUMENTS RELATING to any bank statements or account summaries of Palo
 9 Alto Technical.

10 **AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

11 Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous.
 12 Moreover, the request seeks information not relevant or reasonably calculated to lead to the
 13 discovery of admissible evidence. Code Civ. Proc. §§ 2017.010, 2017.020. Plaintiff also objects
 14 to this request to the extent it seeks the disclosure of protected, personal financial records and
 15 information. See generally, *Cobb v. Sup. Ct.* (1979) 99 Cal.App.3d 543, 550; *Fortunato v. Sup.*
 16 *Ct.* (2003) 114 Cal.App.4th 475, 480; Cal. Const. Art. I, § 1. Plaintiff also objects to the extent
 17 that the request violates the tax payer privilege. See generally, Rev. & Tax Code § 19542; *Webb*
 18 *v. Standard Oil Co.* (1957) 49 Cal.2d 509, 513-514; *Sav-On Drugs, Inc. v. Sup. Ct.* (1975) 15
 19 Cal.3d 1, 7; *Rifkind v. Sup. Ct.* (1981) 123 Cal.App.3d 1045, 1050). Plaintiff additionally objects
 20 to the extent that the request violates constitutionally protected privacy rights (Cal. Const. Art. 1,
 21 §1). Plaintiff further objects to this request to the extent that it encompasses documents
 22 protected by the attorney/client communication's privilege and attorney work product protection.
 23 Evid. Code § 954; Code Civ. Proc. §2018 et seq.

24 Subject to the foregoing objections, no documents will be produced responsive to this
 25 request.

26 **REQUEST FOR PRODUCTION NO. 12:**

27 ALL DOCUMENTS RELATING to tax returns RELATING to Palo Alto Technical.

28 ///


AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

Plaintiff objects to this request on the basis that it is overbroad, vague, and ambiguous. Moreover, the request seeks information not relevant or reasonably calculated to lead to the discovery of admissible evidence. Code Civ. Proc. §§ 2017.010, 2017.020. Plaintiff also objects to this request to the extent it seeks the disclosure of protected, personal financial records and information. See generally, *Cobb v. Sup. Ct.* (1979) 99 Cal.App.3d 543, 550; *Fortunato v. Sup. Ct.* (2003) 114 Cal.App.4th 475, 480; Cal. Const. Art. I, § 1. Plaintiff also objects to the extent that the request violates the tax payer privilege. See generally, Rev. & Tax Code § 19542; *Webb v. Standard Oil Co.* (1957) 49 Cal.2d 509, 513-514; *Sav-On Drugs, Inc. v. Sup. Ct.* (1975) 15 Cal.3d 1, 7; *Rifkind v. Sup. Ct.* (1981) 123 Cal.App.3d 1045, 1050). Plaintiff additionally objects to the extent that the request violates constitutionally protected privacy rights (Cal. Const. Art. 1, §1). Plaintiff further objects to this request to the extent that it encompasses documents protected by the attorney/client communication's privilege and attorney work product protection. Evid. Code § 954; Code Civ. Proc. §2018 et seq.

Subject to the foregoing objections, no documents will be produced responsive to this request.

Dated: December 11, 2007

COTCHETT, PITRE & McCARTHY

By: 
 SEAN E. PONIST
 Attorneys for Plaintiff

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4 VERIFICATION TO FOLLOW
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Jennifer Osbelt, v. David D. McDonald, Donna K. McDonald, et al.
 San Mateo Superior Court CIV 463528

PROOF OF SERVICE

I am employed in San Mateo County, which is where service of the document(s) referred to below occurred. I am over the age of 18 and not a party to the within action. My business address is Cotchett, Pitre & McCarthy, San Francisco Airport Center, 840 Malcolm Road, Suite 200, Burlingame, California 94010. I am readily familiar with Cotchett, Pitre & McCarthy's practices for the service of documents. On this date, I served a true copy of the following document(s) in the manner listed below:

PLAINTIFF'S AMENDED RESPONSES TO DEFENDANTS' AND CROSS-COMPLAINANTS' REQUEST FOR PRODUCTION OF DOCUMENTS

XXX BY MAIL: I am readily familiar with this firm's practice for collection and processing of correspondence for mailing. Following that practice, I placed a true copy of the aforementioned document(s) in a sealed envelope, addressed to each addressee, respectively, as specified below. The envelope was placed in the mail at my business address, with postage thereon fully prepaid, for deposit with the United States Postal Service on that same day in the ordinary course of business.

BY HAND DELIVERY: I am readily familiar with this firm's practice for causing documents to be served by hand delivery. Following that practice, I caused the sealed envelope containing the aforementioned document(s) to be hand delivered to the addressee(s) specified below.

BY OVERNIGHT COURIER SERVICE: I am readily familiar with this firm's practice for causing documents to be served by overnight courier. Following that practice, I caused the sealed envelope containing the aforementioned document(s) to be delivered via overnight courier service to the addressee(s) specified below:

William J. Goines

Karen Rosenthal

Cindy Hamilton

GREENBERG TRAURIG, LLP

1900 University Avenue, Fifth Floor

East Palo Alto, CA 94303

Tel.: (650) 328-8500

Fax: (650) 328-8508

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Burlingame, California, on December 11, 2007.

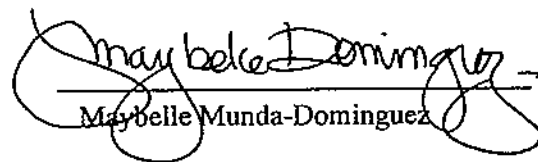

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EXHIBIT B

RECEIVED

SEP 13 2007

COTCHETT, PITRE & MCCARTHY

1 WILLIAM J. GOINES (SBN 61290)
2 KAREN ROSENTHAL (SBN 209419)
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5 1900 University Avenue, Fifth Floor
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9 Attorneys for Defendants and
10 Cross-Complainants David McDonald,
11 Donna McDonald, National Expert
12 Witness Network, and Technology CLE

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO

JENNIFER OSBELT,

Plaintiff;

v.

DAVID D. McDONALD, DONNA K.
McDONALD, et al.,

Defendant(s).

Case No. CIV 463528

**JOINT RESPONSE OF DEFENDANT DAVID
MCDONALD, DEFENDANT DONNA
MCDONALD, CROSS-COMPLAINANT
NATIONAL EXPERT WITNESS NETWORK
LLC, AND CROSS-COMPLAINANT
TECHNOLOGY CLE LLC TO PLAINTIFF'S
REQUEST FOR PRODUCTION OF
DOCUMENTS, SET ONE**

AND RELATED CROSS-ACTION

PROPOUNDING PARTY: PLAINTIFF JENNIFER OSBELT

RESPONDING PARTY: DEFENDANT DAVID D. McDONALD, DEFENDANT
DONNA MCDONALD, CROSS-COMPLAINANT
NATIONAL EXPERT WITNESS NETWORK LLC, CROSS-
COMPLAINANT TECHNOLOGY CLE LLC

SET NUMBER: ONE

Pursuant to California Code of Civil Procedure section 2031.210, Defendant DAVID D.
McDONALD, Defendant DONNA MCDONALD, Cross-Complainant National Expert Witness

1 Network LLC ("NEWN"), and Cross-Complainant Technology CLE LLC ("TCLE") (collectively,
2 "Defendants") hereby responds to the REQUEST FOR PRODUCTION OF DOCUMENTS
3 propounded by Plaintiff JENNIFER OSBELT ("Plaintiff").

4 GENERAL OBJECTIONS

5 A. Defendants objects to each and every demand to the extent that it seeks the production
6 of documents which are protected from disclosure by virtue of the attorney-client privilege or
7 attorney work product doctrine. The inadvertent production of such a document by Defendants shall
8 not be deemed to be a waiver of any such privilege.

9 B. Defendants object to each and every demand to the extent that it seeks the production
10 of documents containing Defendants' confidential business and/or financial information related on
11 the grounds that said information is protected from discovery by the trade secret privilege.
12 Defendants will produce documents containing confidential business and/or financial information
13 only in accordance with the terms of a Protective Order.

14 C. Defendants will state other objections to the demands by use of the following
15 descriptive titles:

16 1. "ATTORNEY-CLIENT OBJECTION": This means that Defendants object to
17 the demand on the grounds that it specifically calls for the production of documents which contain
18 information which is privileged from discovery by virtue of the attorney-client privilege and/or the
19 work product doctrine. When such an objection is made, Defendants will produce responsive
20 documents to the extent that documents may be produced without waiving these privileges and to the
21 extent that the demand is not objected to on other grounds.

22 2. "BURDEN OBJECTION": This means that Defendants object to the demand
23 on the grounds that the time and expense in producing the documents sought would be, in light of
24 their relevance and materiality, if any, unduly burdensome and oppressive.

25 3. "PRIVACY OBJECTION": This means that Defendants object to the demand
26 on the grounds that it seeks the production of documents which contain information which is
27 protected by the right to privacy which is guaranteed by the United States and/or California
28 Constitution.

4. "RELEVANCE OBJECTION": This means that Defendants object to the demand on the grounds that it seeks the production of documents containing information which is not relevant to the subject matter of this action and that the demand is not reasonably calculated to lead to the discovery of relevant evidence.

5. "VAGUENESS OBJECTION": This means that Defendants object to the demand on the grounds that the demand is vague, ambiguous and/or unintelligible.

6. "PREMATURE OBJECTION": This means that Defendants object to the demand on the grounds that the demand seeks information concerning Defendants' contentions prior to the time at which such information may be required to be disclosed.

D. Discovery is continuing. Defendants reserve the right to amend or supplement its responses to these demands at any later time based upon facts or information not yet known.

RESPONSES

DEMAND NO. 1:

All DOCUMENTS concerning or relating to any note or loan obligations of NEWN.

RESPONSE TO DEMAND NO. 1:

Defendants object to this request on the grounds that it is vague and ambiguous with regard to the undefined terms "note" and "loan obligations". Subject to and without waiving the foregoing objection, Defendants will produce documents responsive to this request within Defendants' possession, custody and control.

DEMAND NO. 2:

All DOCUMENTS concerning or relating to any note or loan obligations of TCLE.

RESPONSE TO DEMAND NO. 2:

Defendants object to this request on the grounds that it is vague and ambiguous with regard to the undefined terms "note" and "loan obligations". Subject to and without waiving the foregoing objection, Defendants will produce documents responsive to this request within Defendants' possession, custody and control.

DEMAND NO. 3:

All DOCUMENTS concerning or relating to any notes or loan made by NEWN.

RESPONSE TO DEMAND NO. 3:

Defendants object to this request on the grounds that it is vague and ambiguous with regard to the undefined terms "notes" and "loan". Subject to and without waiving the foregoing objection, Defendants will produce documents responsive to this request within Defendants' possession, custody and control.

DEMAND NO. 4:

All DOCUMENTS concerning or relating to any notes or loan made by TCLE.

RESPONSE TO DEMAND NO. 4:

Defendants object to this request on the grounds that it is vague and ambiguous with regard to the undefined terms "notes" and "loan". Subject to and without waiving the foregoing objection, Defendants will produce documents responsive to this request within Defendants' possession, custody and control.

DEMAND NO. 5:

All DOCUMENTS relating to any communications or correspondence between YOU and PLAINTIFF within the last 12 months.

RESPONSE TO DEMAND NO. 5:

Defendants object to this request on the grounds that that it is vague, ambiguous, burdensome, overbroad, and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendants will produce documents responsive to this request within Defendants' possession, custody and control that relate to the subject matter of the Complaint and the Cross-Complaint.

DEMAND NO. 6:

All DOCUMENTS reflecting any statement made by YOU in the last 12 months about or concerning PLAINTIFF.

RESPONSE TO DEMAND NO. 6:

Defendants object to this request on the grounds that that it is vague, ambiguous, burdensome, overbroad and not reasonably calculated to lead to discoverable information. Subject to and without waiving the foregoing objection, Defendants will produce documents responsive to this request

1 within Defendants' possession, custody and control that relate to the subject matter of the Complaint
2 and the Cross-Complaint.

3 **DEMAND NO. 7:**

4 All DOCUMENTS relating to YOUR offer to purchase PLAINTIFF's interest in NEWN on
5 or about March 26, 2007.

6 **RESPONSE TO DEMAND NO. 7:**

7 Defendants object to this request on the grounds that the undefined term "offer" calls for a
8 legal conclusion. Subject to and without waiving the foregoing objection, Defendants will produce
9 documents responsive to this request within Defendants' possession, custody and control.

10 **DEMAND NO. 8:**

11 All DOCUMENTS relating to PLAINTIFF's acceptance of YOUR offer to purchase her
12 interest in NEWN on or about March 26, 2007.

13 **RESPONSE TO DEMAND NO. 8:**

14 Defendants object to this request on the grounds that the undefined term "acceptance" calls
15 for a legal conclusion. Subject to and without waiving the foregoing objection, Defendants will
16 produce documents responsive to this request within Defendants' possession, custody and control.

17 **DEMAND NO. 9:**

18 All DOCUMENTS relating to YOUR tax returns and records for the last five years.

19 **RESPONSE TO DEMAND NO. 9:**

20 Defendants object to this request on the grounds that this request violates the taxpayer
21 privilege. Defendants will not produce documents responsive to this request.

22 **DEMAND NO. 10:**

23 All DOCUMENTS relating to YOUR books and records for the last five years.

24 **RESPONSE TO DEMAND NO. 10:**

25 Defendants object to this request on the grounds that documents responsive to this request
26 have already been produced to Plaintiffs. Defendants further object to this request on the grounds
27 that the request is overbroad, burdensome and not reasonably calculated to lead to discoverable
28

1 information. Subject to and without waiving the foregoing objection, Defendants will produce
2 documents not previously produced to Plaintiff within Defendants' possession, custody and control.

3 **DEMAND NO. 11:**

4 All DOCUMENTS concerning or relating to any bank statements or account summaries of
5 NEWN for the last five years.

6 **RESPONSE TO DEMAND NO. 11:**

7 Defendants object to this request on the grounds that documents responsive to this request
8 have already been produced to Plaintiffs. Defendants further object to this request on the grounds
9 that the request is overbroad, burdensome and not reasonably calculated to lead to discoverable
10 information. Subject to and without waiving the foregoing objection, Defendants will produce
11 documents not previously produced to Plaintiff within Defendants' possession, custody and control.

12 **DEMAND NO. 12:**

13 All DOCUMENTS concerning or relating to any bank statements or account summaries of
14 TCLE for the last three years.

15 **RESPONSE TO DEMAND NO. 12:**

16 Defendants object to this request on the grounds that documents responsive to this request
17 have already been produced to Plaintiffs. Defendants further object to this request on the grounds
18 that the request is overbroad, burdensome and not reasonably calculated to lead to discoverable
19 information. Subject to and without waiving the foregoing objection, Defendants will produce
20 documents not previously produced to Plaintiff within Defendants' possession, custody and control.

21 **DEMAND NO. 13:**

22 All DOCUMENTS relating to expense claims submitted to NEWN by PLAINTIFF for
23 reimbursement for the last five years.

24 **RESPONSE TO DEMAND NO. 13:**

25 Defendants will produce documents responsive to this request.

26 **DEMAND NO. 14:**

27 All DOCUMENTS relating to expense claims submitted to NEWN by David D. McDonald
28 for reimbursement for the last five years.

RESPONSE TO DEMAND NO. 14:

Defendants object to this request on the grounds that it is overbroad, burdensome, and not reasonably calculated to lead to discoverable information as this request does not relate to the allegations contained in the Complaint or Cross-Complaint. Defendants will not produce documents responsive to this request.

DEMAND NO. 15:

All DOCUMENTS relating to expense claims submitted to NEWN by Donna K. McDonald for reimbursement for the last five years.

RESPONSE TO DEMAND NO. 15:

Defendants object to this request on the grounds that it is overbroad, burdensome, and not reasonably calculated to lead to discoverable information as this request does not relate to the allegations contained in the Complaint or Cross-Complaint. Defendants will not produce documents responsive to this request.

DEMAND NO. 16:

All DOCUMENTS relating to expense claims submitted to TCLE by PLAINTIFF for reimbursement for the last three years.

RESPONSE TO DEMAND NO. 16:

Defendants will produce documents responsive to this request.

DEMAND NO. 17:

All DOCUMENTS relating to expense claims submitted to TCLE by David D. McDonald for reimbursement for the last three years.

RESPONSE TO DEMAND NO. 17:

Defendants object to this request on the grounds that it is overbroad, burdensome, and not reasonably calculated to lead to discoverable information as this request does not relate to the allegations contained in the Complaint or Cross-Complaint. Defendants will not produce documents responsive to this request.

DEMAND NO. 18:

All DOCUMENTS relating to expense claims submitted to TCLE by Donna K. McDonald for reimbursement for the last three years

RESPONSE TO DEMAND NO. 18:

Defendants object to this request on the grounds that it is overbroad, burdensome, and not reasonably calculated to lead to discoverable information as this request does not relate to the allegations contained in the Complaint or Cross-Complaint. Defendants will not produce documents responsive to this request.

DEMAND NO. 19:

All DOCUMENTS relating to expenses charged to the NEWN company credit card by PLAINTIFF or any other person over the last five years.

RESPONSE TO DEMAND NO. 19:

Defendants object to this request on the grounds that it is overbroad, burdensome, and not reasonably calculated to lead to discoverable information as this request does not relate to the allegations contained in the Complaint or Cross-Complaint. Subject to and without waiving the foregoing objections, Defendants will produce documents responsive to this request within Defendants' possession, custody and control.

DEMAND NO. 20:

All DOCUMENTS relating to any payments made by NEWN to PLAINTIFF in the last five years.

RESPONSE TO DEMAND NO. 20:

Defendants will produce documents responsive to this request.

DEMAND NO. 21:

All DOCUMENTS relating to any payments made by NEWN to David D. McDonald in the last five years.

RESPONSE TO DEMAND NO. 21:

Defendants object to this request on the grounds that it is overbroad, burdensome, and not reasonably calculated to lead to discoverable information as this request does not relate to the

1 allegations contained in the Complaint or Cross-Complaint. Defendants will not produce documents
2 responsive to this request.

3 **DEMAND NO. 22:**

4 All DOCUMENTS relating to any payments made by NEWN to Donna K. McDonald in the
5 last five years.

6 **RESPONSE TO DEMAND NO. 22:**

7 Defendants object to this request on the grounds that it is overbroad, burdensome, and not
8 reasonably calculated to lead to discoverable information as this request does not relate to the
9 allegations contained in the Complaint or Cross-Complaint. Defendants will not produce documents
10 responsive to this request.

11 **DEMAND NO. 23:**

12 All DOCUMENTS relating to any payments made by TCLE to PLAINTIFF in the last three
13 years.

14 **RESPONSE TO DEMAND NO. 23:**

15 Defendants will produce documents responsive to this request within Defendants' possession,
16 custody or control.

17 **DEMAND NO. 24:**

18 All DOCUMENTS relating to any payments made by TCLE to David D. McDonald in the
19 last three years.

20 **RESPONSE TO DEMAND NO. 24:**

21 Defendants object to this request on the grounds that it is overbroad, burdensome, and not
22 reasonably calculated to lead to discoverable information as this request does not relate to the
23 allegations contained in the Complaint or Cross-Complaint. Defendants will not produce documents
24 responsive to this request.

25 **DEMAND NO. 25:**

26 All DOCUMENTS relating to any payments made by TCLE to Donna K. McDonald in the
27 last three years.

RESPONSE TO DEMAND NO. 25:

Defendants object to this request on the grounds that it is overbroad, burdensome, and not reasonably calculated to lead to discoverable information as this request does not relate to the allegations contained in the Complaint or Cross-Complaint. Defendants will not produce documents responsive to this request.

DEMAND NO. 26:

All DOCUMENTS relating to NEWN's patent applications pending with the USPTO.

RESPONSE TO DEMAND NO. 26:

Defendants will produce documents responsive to this request within Defendants' possession, custody and control.

DEMAND NO. 27:

All DOCUMENTS relating to TCLE's patent applications pending with the USPTO

RESPONSE TO DEMAND NO. 27:

Defendants will produce documents responsive to this request within Defendants' possession, custody and control.

DEMAND NO. 28:

All DOCUMENTS reflecting the projected value of the patent as alleged in paragraph 23 of the Cross-Complaint.

RESPONSE TO DEMAND NO. 28:

Defendants object to this request on the grounds that it is vague and ambiguous with regard to the undefined term "projected value". Subject to and without waiving the foregoing objection, Defendants will produce documents responsive to this request within Defendants' possession, custody and control.

DEMAND NO. 29:

All DOCUMENTS reflecting any expenses incurred as a result of the patent application process.

RESPONSE TO DEMAND NO. 29:

Defendants will produce documents responsive to this request within Defendants' possession, custody and control.

DEMAND NO. 30:

All DOCUMENTS that relate to YOUR contention in paragraph 23 of the Cross Complaint that "if the patent applications expire TCLE will suffer damages of at least \$500,000, and further damages in the form of licensing revenue.

RESPONSE TO DEMAND NO. 30:

Defendants will produce documents responsive to this request within Defendants' possession, custody and control.

DEMAND NO. 31:

All DOCUMENTS that relate to YOUR contention in paragraphs 21-22 of the Cross Complaint that "Ms. Osbelt is aware of the economic value contained in these patent applications [and] has refused to participate in the necessary steps required to complete the patent applications with the USPTO."

RESPONSE TO DEMAND NO. 31:

Defendants will produce documents responsive to this request within Defendants' possession, custody and control.

DEMAND NO. 32:

All DOCUMENTS that relate to YOUR contention in paragraph 28 of the Cross Complaint that "Ms. Osbelt breached her fiduciary duties as a 25% member of NEWN by failing to renew the line of credit with U.S. Bank, directly resulting in U.S. Bank declaring the note in default."

RESPONSE TO DEMAND NO. 32:

Defendants will produce documents responsive to this request within Defendants' possession, custody and control.

DEMAND NO. 33:

All DOCUMENTS that relate to YOUR contention in paragraph 35 of the Cross Complaint that "Ms. Osbelt made a series of...disparaging remarks about the McDonalds to the Bidwell representative before threatening to sue Bidwell along with the McDonalds.

RESPONSE TO DEMAND NO. 33:

Defendants will produce documents responsive to this request within Defendants' possession, custody and control.

DEMAND NO. 34:

All DOCUMENTS that relate to YOUR contention in paragraphs 74 and 72 of the Cross Complaint that "Ms. Osbelt's slanderous [or libelous] comments have damaged the reputation and business relationship between NEWN on the one hand and Bidwell on the other."

RESPONSE TO DEMAND NO. 34:

Defendants will produce documents responsive to this request within Defendants' possession, custody and control.

DEMAND NO. 35:

All DOCUMENTS and recorded statements provided to NEWN's accountants over the last five years.

RESPONSE TO DEMAND NO. 35:

Defendants object to this request on the grounds that this request violates the taxpayer privilege. Defendants further object to this request on the grounds that documents responsive to this request have previously been provided to Plaintiffs. Subject to and without waiving the foregoing objection, Defendants will produce documents responsive to this request that have not been previously produced and that do not violate the taxpayer privilege.

DEMAND NO. 36:

All DOCUMENTS and recorded statements provided to TCLE's accountants over the last three years.

RESPONSE TO DEMAND NO. 36:

Defendants object to this request on the grounds that this request violates the taxpayer privilege. Defendants further object to this request on the grounds that documents responsive to this request have previously been provided to Plaintiffs. Subject to and without waiving the foregoing objection, Defendants will produce documents responsive to this request that have not been previously produced and that do not violate the taxpayer privilege.

DEMAND NO. 37:

All tax returns, tax schedules, and other related DOCUMENTS filed by or on behalf of NEWN for the last five years.

RESPONSE TO DEMAND NO. 37:

Defendants object to this request on the grounds that this request violates the taxpayer privilege. Defendants will produce documents responsive to this request that have not been previously produced and that do not violate the taxpayer privilege.

DEMAND NO. 38:

All DOCUMENTS supporting YOUR contention in paragraph 35 of the Cross-Complaint that PLAINTIFF had "told the Bidwell representative that the McDonalds have embezzled and stolen money from her" and made other "disparaging remarks."

RESPONSE TO DEMAND NO. 38:

Defendants will produce documents responsive to this request within Defendants' possession, custody and control.

DEMAND NO. 39:

All DOCUMENTS reflecting any amendments or modifications to the NEWN Operating Agreement or Articles of Incorporation.

RESPONSE TO DEMAND NO. 39:

Defendants object to this request on the grounds that is vague and ambiguous with regard to the undefined terms "amendments" and "modifications". Subject to and without waiving the foregoing objections, Defendants will produce documents responsive to this request within Defendants' possession, custody and control.

1 **DEMAND NO. 40:**

2 All DOCUMENTS relating to the governance of NEWN.

3 **RESPONSE TO DEMAND NO. 40:**

4 Defendants object to this request on the grounds that is vague and ambiguous with regard to
5 the undefined term "governance". Subject to and without waiving the foregoing objections,
6 Defendants will produce documents responsive to this request within Defendants' possession,
7 custody and control.

8 **DEMAND NO. 41:**

9 All DOCUMENTS concerning or relating to the business plans of NEWN for the last five
10 years.

11 **RESPONSE TO DEMAND NO. 41:**

12 Defendants object to this request on the grounds that is vague and ambiguous with regard to
13 the undefined term "business plans". Subject to and without waiving the foregoing objections,
14 Defendants will produce documents responsive to this request within Defendants' possession,
15 custody and control.

16 **DEMAND NO. 42:**

17 All DOCUMENTS concerning ore relating to the business plans of TCLE for the last five
18 years.

19 **RESPONSE TO DEMAND NO. 42:**

20 Defendants object to this request on the grounds that is vague and ambiguous with regard to
21 the undefined term "business plans". Subject to and without waiving the foregoing objections,
22 Defendants will produce documents responsive to this request within Defendants' possession,
23 custody and control.

24 **DEMAND NO. 43:**

25 All DOCUMENTS relating to the governance of the TCLE.

26 **RESPONSE TO DEMAND NO. 43:**

27 Defendants object to this request on the grounds that is vague and ambiguous with regard to
28 the undefined term "governance". Subject to and without waiving the foregoing objections,

1 Defendants will produce documents responsive to this request within Defendants' possession,
2 custody and control.

3 **DEMAND NO. 44:**

4 All DOCUMENTS identified in response to special interrogatories 2, 6, 9, 11, 15, 17, 21, 24,
5 27, 30 and 33.

6 **RESPONSE TO DEMAND NO. 44:**

7 Subject to objections set forth response to the special interrogatories, Defendants will
8 produce documents responsive to this request within Defendants' possession, custody and control.

9
10
11
12 Dated: September 12, 2007.

GREENBERG TRAURIG, LLP

13
14 By: 

15 William J. Goines
16 Karen Rosenthal
17 Cindy Hamilton

18 Attorneys for Defendants and Cross-Complainants
19 David McDonald, Donna McDonald, National
20 Expert Witness Network. and Technology CLE
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VERIFICATION

STATE OF CALIFORNIA)
COUNTY OF BUTTE)

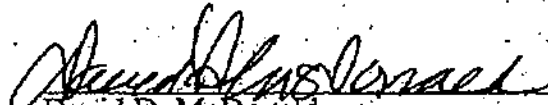
We have read the foregoing JOINT RESPONSE OF DEFENDANT DAVID McDONALD, DEFENDANT DONNA MCDONALD, CROSS-COMPLAINANT NATIONAL EXPERT WITNESS NETWORK LLC, AND CROSS-COMPLAINANT TECHNOLOGY CLE LLC TO PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE and know its contents.

We, David D. McDonald and Donna K. McDonald, are parties to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I, David D. McDonald, am an Officer of NATIONAL EXPERT WITNESS NETWORK LLC and TECHNOLOGY CLE LLC, parties to this action, and am authorized to make this verification for and on their behalf, and I make this verification for that reason. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed on 9/12, 2007, at Paradise, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


David D. McDonald

National Expert Witness Network, LLC

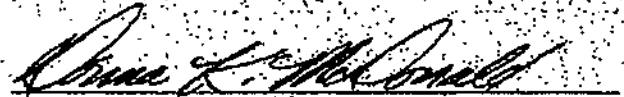
By 
David D. McDonald

Technology CLE, LLC

By 
David D. McDonald

1 Executed on Sept 12, 2007, at Paradise, California.

2
3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct.

5 
6 Donna K. McDonald

Osbelt v. McDonald, et al.

Case No. CIV 463528

PROOF OF SERVICE

I, Cathy Sandifer, declare that I am a citizen of the United States, over the age of eighteen years and not a party to the within action. I am an employee of GREENBERG TRAURIG, LLP, and my business address is 1900 University Avenue, Fifth Floor, East Palo Alto, CA 94303. On September 12, 2007, I served the following documents:

JOINT RESPONSE OF DEFENDANT DAVID MCDONALD, DEFENDANT DONNA MCDONALD, CROSS-COMPLAINANT NATIONAL EXPERT WITNESS NETWORK LLC, AND CROSS-COMPLAINANT TECHNOLOGY CLE LLC TO PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE

☒ by transmitting via **FACSIMILE** the document(s) listed above to the fax numbers) set forth below, or as stated on the attached service list, on this date at approximately _____, from the sending facsimile machine telephone number of 650-289-7893. The transmission was reported as complete and without error by the machine. Pursuant to California Rules of Court, Rule 2008(e)(4), I caused the machine to print a transmission record of the transmission, a copy of which is attached to the original of this declaration. The transmission report was properly issued by the transmitting facsimile machine.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the **UNITED STATES MAIL** at East Palo Alto, California, addressed as set forth below.

☐ by **OVERNIGHT MAIL** by placing the document(s) listed above in a sealed overnight mail envelope with postage thereon fully prepaid, addressed as set forth below.

☐ **(BY MESSENGER PERSONAL SERVICE)**. I caused delivery of such envelope by hand via courier service to the offices of the addressee.

Joseph W. Cotchett, Esq.
Cotchett, Pitre & McCarthy
840 Malcolm Rd., Ste. 200
Burlingame, CA 94010
Fax No. (650) 697-0577

I am readily familiar with the business practice of my place of employment in respect to the collection and processing of correspondence, pleadings and notices for mailing with United States Postal Service/Express Mail, Federal Express and other overnight mail services. The foregoing sealed envelope was placed for collection and mailing this date consistent with the ordinary business practice of my place of employment, so that it will be picked up this date with postage thereon fully prepaid at East Palo Alto, California, in the ordinary course of such business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 12, 2007, at East Palo Alto, California.


Cathy Sandifer

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Proof of Service

1 GREENBERG TRAURIG, LLP
2 WILLIAM J. GOINES (SBN 61290)
3 KAREN ROSENTHAL (SBN 209419)
4 CINDY HAMILTON (SBN 217951)
5 1900 University Avenue, Fifth Floor
6 East Palo Alto, CA 94303
7 Telephone: (650) 328-8500
8 Facsimile: (650) 328-8508

9
10 Attorneys for Defendants and Cross-Complainants
11 DAVID MCDONALD, DONNA MCDONALD,
12 NATIONAL EXPERT WITNESS NETWORK, and
13 TECHNOLOGY CLE

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28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

JENNIFER OSBELT,
an individual,

Plaintiff,

v.

DAVID MCDONALD, DONNA K.
MCDONALD; and DOES 1-10, inclusive
Defendants.

Case No. CIV 463528

**DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION TO
COMPEL PRODUCTION AND
FOR SANCTIONS**

Date: January 15, 2008
Time: 9:00 a.m.
Dept. LM

AND RELATED CROSS-ACTION

E-FILED
SAN MATEO COUNTY
JAN 02, 2008

Clerk of the Superior Court
By U. FINAU
DEPUTY CLERK

1 **I. INTRODUCTION**

2 Defendants David McDonald and Donna McDonald, collectively, "Defendants" are baffled by
3 Plaintiff's Motion to Compel. Counsel for Plaintiff and counsel for Defendants engaged in meet and
4 confer efforts for the discrete number of Defendants' discovery responses that Plaintiff felt were
5 deficient, and Defendants produced further documents as a result. Defendants did not receive any
6 further meet and confer correspondence or phone calls from opposing counsel and assumed all issues
7 had been resolved. This motion appeared as an apparent response to a motion to compel filed by
8 Defendants in response to not having received a single document produced from Plaintiff. However,
9 many of the discovery responses in the separate statement have never been the subject of meet and
10 confer efforts by Plaintiff, and appear for the first time in this motion. For that reason, and because
11 Defendants have fully produced all responsive documents, Plaintiff's motion should be denied.

12 **II. FACTUAL BACKGROUND**

13 Plaintiff served a request for production of documents on Defendants on August 1, 2007.
14 Following a brief extension and mutual efforts to iron out the details of a protective order, on October
15 10, 2007, Defendants produced Bates-stamped document Nos. NEWN 00001-NEWN 00995. A true
16 and correct copy of this correspondence is attached as Exhibit A to the Declaration of Cindy Hamilton.

17 On October 15, 2007, Plaintiff sent a meet-and-confer letter identifying three categories of
18 documents to which they felt there was an inadequate response: (a) tax returns (Request Nos. 11, 12, 36-
19 38); (b) expense reports submitted by David and Donna McDonald (Request Nos. 19, 20, 22-24); and
20 (c) the books and records of the company, contained in NEWN's QuickBooks files (Request Nos. 11,
21 12, 15-17, 22-24, 26-30, 36-38). A true and correct copy of this is attached as Exhibit B to the
22 Declaration of Cindy Hamilton.

23 In response, on October 26, 2007, Defendants produced original and amended tax returns Bates-
24 stamped NEWN 01020-01252, taking care of the first item Plaintiff requested. A true and correct copy
25 of this letter is attached as Exhibit C to the Declaration of Cindy Hamilton. During his deposition on
26 October 17, 2007, David McDonald testified that neither he nor Donna McDonald submitted expense
27 reports to NEWN, addressing the second item Plaintiff requested.
28

1 On November 3, 2007, Plaintiff sent a follow up meet-and-confer letter indicating that they still
2 wanted "consulting fees charged to NEWN and TCLE", a category of documents that Defendants had
3 not previously produced. A true and correct copy of this letter is attached as Exhibit D. Accordingly,
4 Defendant produced documents representing the consulting fees charged and these documents were used
5 as exhibits by Plaintiff in the subsequent deposition of Donna McDonald on December 27, 2007.
6

7 The only item left unresolved was the books and records of NEWN, maintained on a
8 QuickBooks computer program. Although many QuickBooks balance sheets, profit and loss statements,
9 etc., had been produced to Plaintiff, Plaintiff had indicated they wanted "all of the QuickBooks".

10 Defendants offered Plaintiffs counsel Sean Ponist unfettered access through an online link to NEWN's
11 QuickBooks, a request that Plaintiff denied, instead wanting "hard copies of the QuickBooks". See
12 Declaration of Cindy Hamilton. On October 9, 2007, Defendants sent a meet-and-confer letter to
13 Plaintiff explaining that "QuickBooks is an interactive computer software program and you have to
14 input into the program the specific information you are seeking. To give you an example of how
15 QuickBooks is set up I am attaching a print-out with examples of the vast file menus found in
16 QuickBooks. Please articulate exactly what information you are seeking, preferably after discussing the
17 issue with someone familiar with QuickBooks." This letter attached a printout of the menu's found in
18 Quickbooks showing the different options and requesting that Plaintiff articulate what she wanted, as
19 there is simply not a way to hit "Print" and produce the entire contents of QuickBooks. This letter with
20 QuickBooks screen print out attached is attached to the Declaration of Cindy Hamilton as Exhibit E.
21 Defendants did not receive any further responses from Plaintiff addressing the issue of QuickBooks.

22 In sum, Defendants took great care to address and respond to each of Plaintiff's concerns, and
23 had not received any meet and confer correspondence regarding Defendants' responses from Plaintiff
24 since November 3, 2007 when suddenly their motion to compel was filed on December 18, 2007.
25 Several of the items in Plaintiff's separate statement have never been the subject of a meet and confer
26 letter, including request numbers 25, 43, 46, 47, 48, 49, 52 and 53. Because Plaintiff has never made an
27 effort to meet and confer on these requests, they are improperly included in Plaintiff's motion to compel.
28

III. LEGAL ARGUMENT

A. Plaintiff Failed To Meet and Confer On Certain of the Discovery Requests

Despite the statutory requirement that parties meet and confer prior to bringing a discovery motion before the Court, Plaintiff failed to meet and confer with Defendants on a number of discovery requests. Defendants' responses to certain discovery requests in the separate statement have never been the subject of meet and confer efforts by Plaintiff, and were brought to Plaintiff's attention for the first time in this motion. These requests are 46-49, 52 and 53.

Misuse of the discovery process may result in the imposition of a variety of sanctions. These include payment of costs, sanctions barring the introduction of certain evidence, sanctions deeming that certain issues are determined against the offending party, and sanctions terminating an action in favor of the aggrieved party. Code Civ. Proc., §§ 2023.020, 2023.030. Misuse of the discovery process includes failing to respond or submit to authorized discovery, providing evasive discovery responses, disobeying a court order to provide discovery, unsuccessfully making or opposing discovery motions without substantial justification, and failing to meet and confer in good faith to resolve a discovery dispute when required by statute to do so. Code Civ. Proc., § 2023.010, subds. (d)-(i).) The court may impose sanctions "[t]o the extent authorized by the chapter governing any particular discovery method or any other provision of this title" Code Civ. Proc., § 2023.030.; *Karlsson v. Ford Motor Co.*, 140 Cal. App. 4th 1202, 1214 (Cal. Ct. App. 2006).

Code of Civil Procedure section 2025.480, subdivision (b) states a motion to compel "shall be accompanied by a meet and confer declaration[.]" Code Civ. Proc., § 2025.480; *Wilson v. 21st Century Ins. Co.*, 136 Cal. App. 4th 97, 113 (Cal. Ct. App. 2006). A "meet and confer declaration in support of a motion shall state facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion." Code Civ. Proc., § 2016.040. Plaintiff has failed to meet this requirement.

Defendants are entitled to sanctions due to Plaintiff's failure to meet and confer. Code Civ. Proc., § 2023.020 provides that: "Notwithstanding the outcome of the particular discovery motion, the court shall impose a monetary sanction ordering that any party or attorney who fails to confer as required pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that

1 conduct.” Accordingly, Plaintiff requests that the Court impose sanctions on Plaintiff for its blatant
2 failure to meet and confer.

3 **B. The Motion to Compel is Substantively Flawed.**

4 To aid the Court in ruling on this motion, Defendants will go through each of the categories
5 identified by Plaintiff in their motion and address the document production on that item.

6 **1. Books and records, accounting statements and documents and other relevant**
7 **financial information**

8 Defendants previously offered Plaintiff complete unfettered access to NEWN’s QuickBooks in
9 the form of an online link the QuickBooks. Counsel for Plaintiff Sean Ponist declined Defendants offer.
10 See Declaration of Cindy Hamilton. Plaintiff further declined to articulate which menus and sections
11 from QuickBooks Plaintiff sought and in fact declined to respond to Defendants November 9, 2007 meet
12 and confer letter seeking articulation on the QuickBooks issue. Since the filing of this motion when
13 Defendants realized that apparently this issue had not been resolved, Defendants have offered to make
14 all books and records of the company available at the NEWN offices on a mutually agreeable date so
15 that Plaintiff may copy whatever she is seeking. For that reason, Defendant believes that these issues are
16 moot.

17 **2. Plaintiff’s 401K and Profit Sharing Plans (Responses 46-49)**

18 Defendants produced in full all documents pertaining to Plaintiff’s 401K and Profit Sharing
19 Plans. Plaintiff has never once mentioned that Defendants response to requests no 46-49 were
20 insufficient in any form, including their meet and confer letters of October 15, 2007 and November 3,
21 2007. See Declaration of Cindy Hamilton. For that reason Defendants are baffled by the inclusion of
22 this request in Plaintiff’s Motion to Compel, and can only say that all documents in this regard have
23 been produced.

24 **3. Defendants have failed to produce responsive documents relating to consulting fees**
25 **paid to Defendants by NEWN and TCLE.**

26 Again, Defendants are baffled by the inclusion of documents relating to the consulting fees paid
27 to Defendants by NEWN and TCLE (Requests 52 and 53) because these documents have been fully
28 produced and in fact Plaintiff used these documents as exhibits to the deposition of Donna McDonald on

1 December 27, 2007. See Declaration of Cindy Hamilton. Plaintiff did send a meet and confer letter
2 regarding consulting agreements on November 3, 2007, and these documents were produced to
3 Plaintiffs shortly following the receipt of this letter and before the filing of Plaintiff's premature motion
4 to compel. Because Plaintiff is clearly in possession of these documents Defendants must assume that
5 this issue is moot. To the extent Plaintiff feels this item is not moot, Defendants have no further
6 documents in their possession, custody or control pertaining to these documents.

7
8 **4. Documents related to the governance of TCLE**

9 Defendants have produced all documents in their possession related to TCLE. Documents
10 pertaining to the governance of TCLE were not produced because none exist. On December 27, 2007,
11 Donna McDonald testified in deposition that she has never seen documents related to the governance of
12 TCLE, and so for that reason at this juncture Defendants believe that no governance documents exist
13 and so there are no responsive documents to produce.

14 **5. Plaintiff's request for sanctions**

15 Plaintiff's request for sanctions relating to their motion to compel is utterly inappropriate as
16 Plaintiff failed to exhaust meet and confer efforts before filing this motion. Defendants had not received
17 any meet and confer correspondence related to any insufficient responses since November 3, 2007 when
18 this motion was filed on December 18, 2007. Defendants were under the impression that all outstanding
19 issues had been resolved when this motion was received. Furthermore, a review of the correspondence
20 attached to the Declaration of Cindy Hamilton reveals that requests no 25, 43, 46, 47, 48, 49, 52 and 53,
21 which are contained in the separate statement have never been the subject of meet and confer efforts by
22 Plaintiff. Defendants can only assume that this motion was filed in retaliation for Defendants motion to
23 compel, which was completely necessary because Defendants had not received a single document from
24 Plaintiff.

25 //

26 //

27 //

1
2 **IV. CONCLUSION**

3 For the foregoing reasons, Defendants respectfully request that the Court deny Plaintiff's motion
4 to compel and request for sanctions.

5 DATED: January 2, 2008

GREENBERG TRAURIG, LLP

6
7 By



8 William J. Goines
9 Cindy Hamilton
Karen Rosenthal

10 Attorneys for Defendants and Cross-Complainants
11 David McDonald, Donna McDonald, National Expert
12 Witness Network, And Technology CLE
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Osbelt v. McDonald, et al.

Case No. CIV 463528

PROOF OF SERVICE

I, Cathy Sandifer, declare that I am a citizen of the United States, over the age of eighteen years and not a party to the within action. I am an employee of GREENBERG TRAURIG, LLP, and my business address is 1900 University Avenue, Fifth Floor, East Palo Alto, CA 94303. On January 2, 2008, I served the following documents:

DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL AND SANCTIONS

- ☒ by transmitting via **FACSIMILE** the document(s) listed above to the fax numbers) set forth below, or as stated on the attached service list, on this date at approximately _____, from the sending facsimile machine telephone number of 650-289-7893. The transmission was reported as complete and without error by the machine. Pursuant to California Rules of Court, Rule 2008(e)(4), I caused the machine to print a transmission record of the transmission, a copy of which is attached to the original of this declaration. The transmission report was properly issued by the transmitting facsimile machine.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the **UNITED STATES MAIL** at East Palo Alto, California, addressed as set forth below.
- ☐ by **OVERNIGHT MAIL** by placing the document(s) listed above in a sealed overnight mail envelope with postage thereon fully prepaid, addressed as set forth below.
- ☐ **(BY MESSENGER PERSONAL SERVICE)**. I caused delivery of such envelope by hand via courier service to the offices of the addressee.

Sean Ponist, Esq.
Cotchett, Pitre & McCarthy
840 Malcolm Rd., Ste. 200
Burlingame, CA 94010
Fax No. (650) 697-0577

I am readily familiar with the business practice of my place of employment in respect to the collection and processing of correspondence, pleadings and notices for mailing with United States Postal Service/Express Mail, Federal Express and other overnight mail services. The foregoing sealed envelope was placed for collection and mailing this date consistent with the ordinary business practice of my place of employment, so that it will be picked up this date with postage thereon fully prepaid at East Palo Alto, California, in the ordinary course of such business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 2, 2008, at East Palo Alto, California.


Cathy Sandifer

1 GREENBERG TRAURIG, LLP
2 WILLIAM J. GOINES (SBN 61290)
3 KAREN ROSENTHAL (SBN 209419)
4 CINDY HAMILTON (SBN 217951)
5 1900 University Avenue, Fifth Floor
6 East Palo Alto, CA 94303
7 Telephone: (650) 328-8500
8 Facsimile: (650) 328-8508

9 Attorneys for Defendants and Cross-Complainants
10 DAVID MCDONALD, DONNA MCDONALD, NATIONAL
11 EXPERT WITNESS NETWORK, and TECHNOLOGY CLE

E-FILED
SAN MATEO COUNTY
JAN 02, 2008

Clerk of the Superior Court
By U. FINAU
DEPUTY CLERK

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN MATEO

14 JENNIFER OSBELT,
15 an individual,

16 Plaintiff,

17 v.

18 DAVID MCDONALD, DONNA K.
19 MCDONALD; and
20 DOES 1-10, inclusive

21 Defendants.

Case No. CIV 463528

**DECLARATION OF CINDY
HAMILTON IN OPPOSITION TO
PLAINTIFF'S MOTION TO
COMPEL AND SANCTIONS**

Date: January 15, 2008
Time: 9:00 a.m.
Dept. LM

22 AND RELATED CROSS-ACTION

23 I, Cindy Hamilton, declare:

24 1. I am an attorney at law duly licensed to practice in the State of California and am an
25 associate in the law firm of Greenberg Traurig, LLP, counsel of record for Defendants and Cross-
26 Complainants Donna McDonald, David McDonald, National Expert Witness Network, and
27 Technology CLE ("Defendants"). I am familiar with the facts and circumstances of the above-
28 referenced action and the matters contained in this Declaration and would, if called upon as a witness,
competently testify thereto.

1 2. Plaintiff served a Request for Production of Documents on Defendants on August 1,
2 2007. Following a brief extension and mutual efforts to iron out the details of a protective order, on
3 October 10, 2007, Defendants produced Bates-stamped documents NEWN00001-00995. A true and
4 correct copy of this correspondence is attached as Exhibit A.

5 3. On October 15, 2007, Plaintiff sent a meet-and-confer letter identify three categories
6 of documents to which they felt there was an inadequate response from Defendants: (a) tax returns
7 (Request Nos. 11, 12, 36-38); (b) expense reports submitted by David and Donna McDonald
8 (Request Nos. 19, 20, 22-24); and (c) the books and records of the company, contained in NEWN's
9 QuickBooks files (Request Nos. 11, 12, 15-17, 22-24, 26-30, 36-38). A true and correct copy of this
10 letter is attached as Exhibit B.

11 4. In response, on October 26, 2007, Defendants produced original and amended tax
12 returns Bates-stamped NEWN 01020-01252, taking care of the first item Plaintiff requested. A true
13 and correct copy of this letter is attached as Exhibit C. In his deposition of October 17, 2007, David
14 McDonald testified that neither he nor Donna McDonald submitted expense reports to NEWN,
15 addressing the second item Plaintiff requested.

16 5. On November 3, 2007, Plaintiff sent a follow-up meet-and-confer letter indicating that
17 they still wanted "consulting fees charged to NEWN and TCLE", a category of documents that
18 Defendants had not previously produced. A true and correct copy of this letter is attached as Exhibit
19 D. Accordingly, Defendants produced documents representing the consulting fees charged and these
20 documents were used as exhibits by Plaintiff in the subsequent deposition of Donna McDonald.

21 6. The only item left unresolved was the books and records of NEWN, maintained on a
22 QuickBooks computer program. Although many QuickBooks balance sheets, profit and loss
23 statements, etc., had been produced to Plaintiff, Plaintiff had indicated they wanted "all of the
24 QuickBooks." Defendants offered Plaintiff's counsel, Sean Ponist, unfettered access through an on-
25 line link to NEWN's QuickBooks, a request that Plaintiff denied, instead wanting "hard copies of the
26 QuickBooks". On November 9, 2007, Defendants sent a meet-and-confer letter to Plaintiff's counsel
27 explaining that "QuickBooks is an interactive computer software program and you have to input into
28

1 the program the specific information you are seeking. To give you an example of how QuickBooks
2 is set up, I am attaching a print-out with examples of the vast file menus found in QuickBooks.
3 Please articulate exactly what information you are seeking, preferably after discussing the issue with
4 someone familiar with Quickbooks." This letter attached a printout of the menu's found in
5 QuickBooks showing the different options and requesting that Plaintiff articulate what she wanted, as
6 there is simply not a way to hit "Print" and produce the entire contents of QuickBooks. A copy of
7 this letter with the QuickBooks screen printout is attached to hereto as Exhibit E.

8 7. Plaintiff has never once mentioned that Defendants' responses to Request Nos. 46-49
9 were insufficient in any form, including their meet-and-confer letters of October 15, 2007 and
10 November 3, 2007.

11 8. Defendants are baffled by the inclusion of documents relating to the consulting fees
12 paid to Defendants by NEWN and TCLE (Request Nos. 52 and 53) because these documents have
13 been fully produced and in fact Plaintiff used these documents used these documents as exhibits to
14 the depositions of Donna McDonald on December 27, 2007.

15
16 I declare under penalty of perjury under the laws of the state of California that the foregoing is
17 true and correct. Executed at East Palo Alto, California, this 12th day of December, 2007.

18
19 Dated: January 2, 2008


Cindy Hamilton, Esq.

EXHIBIT A

Greenberg Traurig

Cindy Hamilton
Tel. 650.289.7859
Fax 650.462.7859
hamiltonc@gtlaw.com

October 10, 2007

VIA FACSIMILE and US MAIL

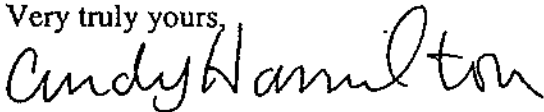
Ara Jabaghourian, Esq.
Cotchett, Pitre & McCarthy
840 Malcolm Rd., Ste. 200
Burlingame, CA 94010

Re: Osbelt v. McDonald, et al.

Dear Mr. Jabaghourian:

Enclosed please find documents responsive to your Request for Production of Documents bates labeled NEWN 00001-NEWN 00995.

Very truly yours,



Cindy Hamilton

ALBANY
AMSTERDAM
ATLANTA
BOCA RATON
BOSTON
CHICAGO
DALLAS
DENVER
FORT LAUDERDALE
LOS ANGELES
MIAMI
NEW JERSEY
NEW YORK
ORANGE COUNTY, CA
ORLANDO
PHILADELPHIA
PHOENIX
SILICON VALLEY
TALLAHASSEE
TYSONS CORNER
WASHINGTON, D.C.
WEST PALM BEACH
WILMINGTON
ZURICH

EXHIBIT B

LAW OFFICES
COTCHETT, PITRE & MCCARTHY

SAN FRANCISCO AIRPORT OFFICE CENTER

840 MALCOLM ROAD

BURLINGAME, CALIFORNIA 94010

TELEPHONE (650) 697-6000

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LOS ANGELES OFFICE
9454 WILSHIRE BOULEVARD, SUITE 907
BEVERLY HILLS, CA 90212
(310) 247-9247

OF COUNSEL
ROBERT B. HUTCHINSON

WASHINGTON, D.C. OFFICE
1364 BEVERLY ROAD, SUITE 201
McLEAN, VA 22101
(703) 893-9600

OF COUNSEL
MARK P. FRIEDLANDER, JR.

October 15, 2007

NEW YORK OFFICE
100 PARK AVENUE, SUITE 2600
NEW YORK, NY 10017
(212) 682-3198

Cindy Hamilton
GREENBERG TRAURIG, LLP
1900 University Avenue, Fifth Floor
East Palo Alto CA 94303

Re: *Osbelt v. McDonald, et al.*, Case No. CIV 463528

Re: Defendants' Objections to Second Amended Notice of Deposition and Request for Production of Documents

Dear Cindy:

We received defendants' document productions late last week and have compared it to their objections to the document production request. The objections are not well-taken. Unless defendants intend to seek a protective order, plaintiff expects defendants to produce the requested documents and be prepared to testify on all relevant matters at their depositions.

Defendants have refused to produce the tax records for NEWN and TCLE, mistakenly asserting taxpayer privilege. (Defendants' responses to requests 11, 12, 36-38.) Plaintiff Jennifer Osbelt is a member and manager of both LLCs. The taxpayer privilege does not apply to her. The objection is without basis.

Defendants also have refused to produce expenses that they billed to NEWN and TCLE, erroneously and nonsensically asserting that the request is "not reasonably calculated to lead to discoverable information." (Defendants' responses to requests 19, 20, 22-24.) Likewise, Defendants have refused to produce documents concerning payments made by NEWN and TCLE to them. (Defendants' responses to requests 26-30.) The information sought is relevant and "reasonably calculated to lead to discovery of admissible evidence." Plaintiff has brought claims against Defendants for, *inter alia*, Accounting and Breach of Fiduciary Duty. She has alleged, *inter alia*, that Defendants have falsely allocated profits and misappropriated company funds. The information sought bears on these claims and allegations.

Lastly, based on Defendants' objections, it is unclear what documents have been produced, what documents have been withheld and what documents they still intend to produce.

LAW OFFICES

COTCHETT, PITRE & MCCARTHY

Cindy Hamilton
GREENBERG TRAURIG, LLP
October 15, 2007
Page 2

(Defendants' responses to requests 11, 12, 15-17, 22-24, 26-30, 36-38.) Plaintiff's position is and has always been that, as a member and manager of both the LLCs, she is entitled to all access and copies of all books and records and all accountant information. To the extent that defendants persist in denying Ms. Osbelt her right to these records and information, she requests that defendants produce a privilege log of all items withheld and an itemization of all items produced to date.

Your prompt attention to these matters is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to be "Sean E. Ponist", with a long horizontal line extending to the right.

Sean E. Ponist

cc: William Goines
Ara Jabaghourian

Greenberg Traurig

Cindy Hamilton
Tel. 650.289.7859
Fax 650.482.7859
hamiltonc@gtlaw.com

October 26, 2007

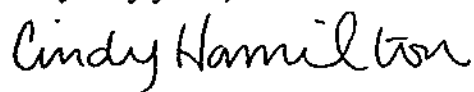
Joseph Cotchett, Esq.
Ara Jabaghourian, Esq.
Cotchett, Pitre & McCarthy
840 Malcolm Rd., Ste. 200
Burlingame, CA 94010

Re: Osbelt v. McDonald, et al.

Gentlemen:

In addition to the documents previously produced by our clients, enclosed are copies of National Expert Witness Network, LLC's Partnership Tax Returns for the years 2004, 2005 and 2006 (Bates-stamp Nos. NEWN 01020-01252).

Very truly yours,



Cindy Hamilton

ALBANY
AMSTERDAM
ATLANTA
BOCA RATON
BOSTON
CHICAGO
DALLAS
DENVER
FORT LAUDERDALE
LOS ANGELES
MIAMI
NEW JERSEY
NEW YORK
ORANGE COUNTY, CA
ORLANDO
PHILADELPHIA
PHOENIX
SILICON VALLEY
TALLAHASSEE
TYSONS CORNER
WASHINGTON, D.C.
WEST PALM BEACH
WILMINGTON
ZURICH

LAW OFFICES
COTCHETT, PITRE & MCCARTHY

SAN FRANCISCO AIRPORT OFFICE CENTER

840 MALCOLM ROAD

BURLINGAME, CALIFORNIA 94010

TELEPHONE (650) 697-6000

FAX (650) 697-0577

LOS ANGELES OFFICE
9454 WILSHIRE BOULEVARD, SUITE 907
BEVERLY HILLS, CA 90212
(310) 247-9247

OF COUNSEL
ROBERT B. HUTCHINSON

WASHINGTON, D.C. OFFICE
1364 BEVERLY ROAD, SUITE 201
MCLEAN, VA 22101
(703) 893-9600

OF COUNSEL
MARK P. FRIEDLANDER, JR.

NEW YORK OFFICE
100 PARK AVENUE, SUITE 2600
NEW YORK, NY 10017
(212) 692-3198

November 3, 2007

BY FAX

Cindy Hamilton
GREENBERG TRAURIG, LLP
1900 University Avenue, Fifth Floor
East Palo Alto CA 94303

Re: *Osbelt v. McDonald, et al.*, Case No. CIV 463528
(Defendants' Failure to Produce Responsive Documents)

Dear Cindy:

On October 15, 2007, plaintiff drafted a meet and confer regarding defendants' failure to produce tax records for NEWN and TCLE (Deposition Requests for Production ("DRFD") 11, 12, 36-38; Request for Production served August 1, 2007 ("RFP") 9, 35-37), failure to produce payment and expense information, including, but not limited to, consulting fees charged to NEWN and TCLE (DRFP 19, 20, 22, 23, 26, 27, 29, 30, 50-53; RFP 14, 15, 17, 18, 21, 22, 24, 25), failure to produce documents on the basis that defendants allegedly provided them to plaintiff previously (DRFP 14-17; RFP 10-12; RFP 14-17), and failure to provide a privilege log or otherwise clearly indicate what documents are being withheld from production.¹

At defendants' depositions that same week, you and Mr. Goines indicated that defendants would withdraw their objections and produce these items. Subsequently, I have followed up with your office on October 24, 2007 and November 1, 2007 regarding these items, receiving assurances that they will be provided. Yet, as of today, plaintiff still has not received responsive documents as promised. So that we may avoid motion practice, please provide all responsive documents no later than November 2, 2007.

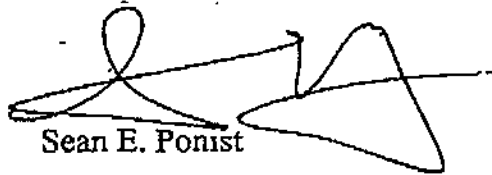
¹ Furthermore, none of the NEWN's and TCLE's 401k plan and profit sharing documents have been produced despite defendants' agreement to produce them (DRFP 46-49).

LAW OFFICES
COTCHETT, PITRE & MCCARTHY

Cindy Hamilton
GREENBERG TRAURIG, LLP
November 3, 2007
Page 2

Note that defendants' depositions also demonstrated that they failed to produce documents as maintained in the normal course of business or organized by category in response to plaintiff's requests for production. As such, the production fails to comply with the code of civil procedure. Please correct this defect in your production as well.

Sincerely,



Sean E. Ponist

Greenberg Traurig

Cindy Hamilton
Tel. 650.288.7859
Fax 650.482.7859
hamiltonc@gtlaw.com

November 9, 2007

Sean Ponist, Esq.
Cotchett, Pitre & McCarthy
840 Malcolm Rd., Ste. 200
Burlingame, CA 94010

Re: Osbelt v. McDonald, et al.

Dear Sean:

We are in receipt of your meet and confer letters dated November 3, 2007. Defendants responded to your previous October 15, 2007 meet and confer letter by producing original and amended tax returns on October 26, 2007. These documents were bates stamped NEWN 01020-01252.

During the course of the depositions of Dave McDonald and Donna McDonald, you requested a backup for the various loans made by the McDonalds to National Expert Witness Network, Inc. ("NEWN") from the inception of the company. Much of this information has been provided to your client over the course of their relationship, however, the McDonalds have gone back through their records and were able to locate these documents. We are currently in the process of redacting bank account information but we will have these documents to produce to you next week.

Your Request for Production of Documents to our clients also requested QuickBook files. You declined our offer to access the QuickBook files online through NEWN's accountant, requesting instead that we produce hard copies of the QuickBooks records. As we have since discussed telephonically, QuickBooks is an interactive computer software program and you have to input into the program the specific information you are seeking. To give you an example of how QuickBooks is set up I am attaching a print-out with examples of the vast file menus found in QuickBooks. Please articulate exactly what information you are seeking, preferably after discussing the issue with someone familiar with Quickbooks.

Our clients are in the process of gathering documents reflecting consulting fees charged to NEWN. We are also still preparing a privilege log and expect to produce both of these items to you next week.

ALBANY
AMSTERDAM
ATLANTA
BOCA RATON
BOSTON
CHICAGO
DALLAS
DENVER
FORT LAUDERDALE
LOS ANGELES
MIAMI
NEW JERSEY
NEW YORK
ORANGE COUNTY, CA
ORLANDO
PHILADELPHIA
PHOENIX
SILICON VALLEY
TALLAHASSEE
TYSONS CORNER
WASHINGTON, D.C.
WEST PALM BEACH
WILMINGTON
ZURICH

Sean Ponist, Esq.
November 9, 2007
Page 2

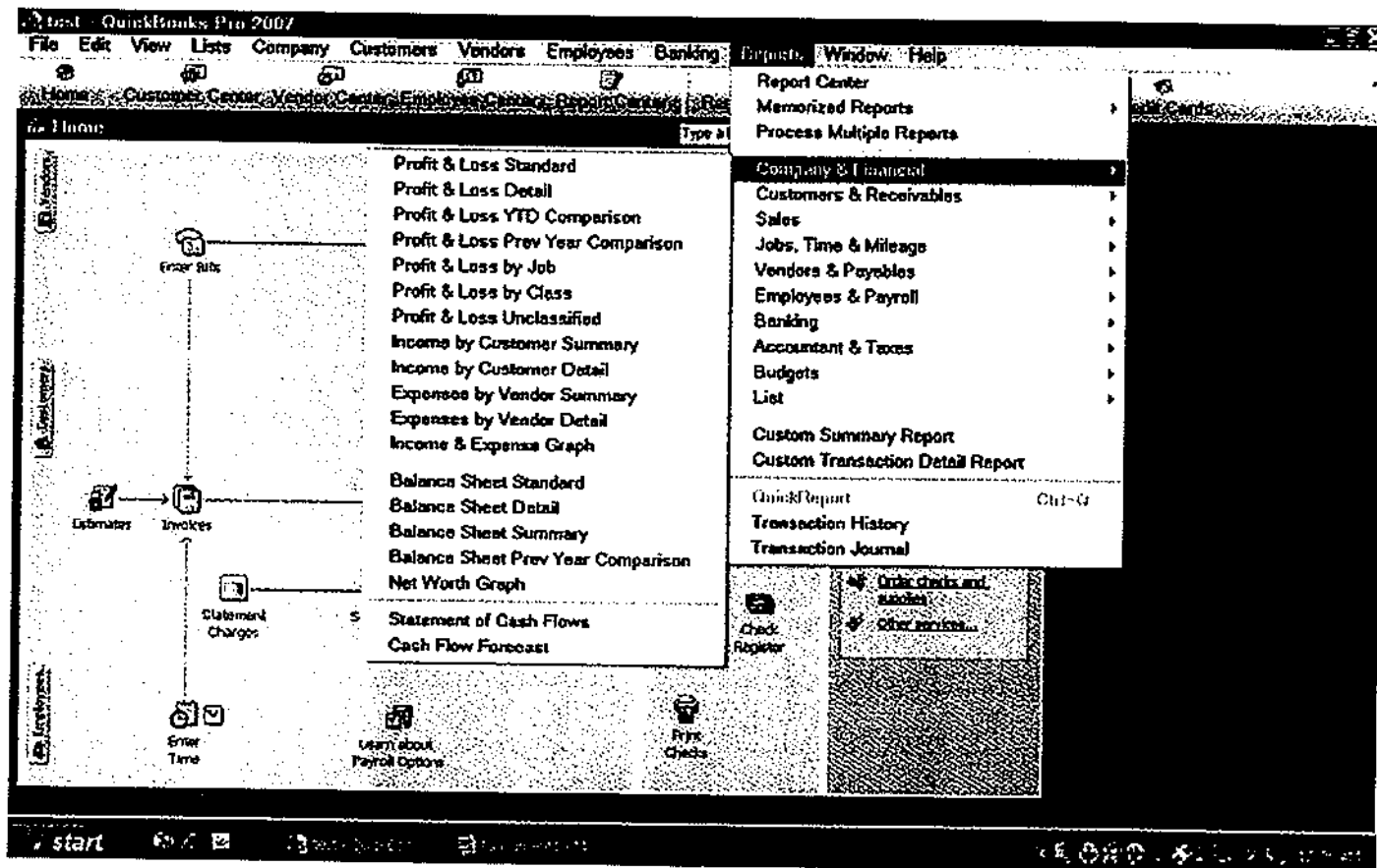
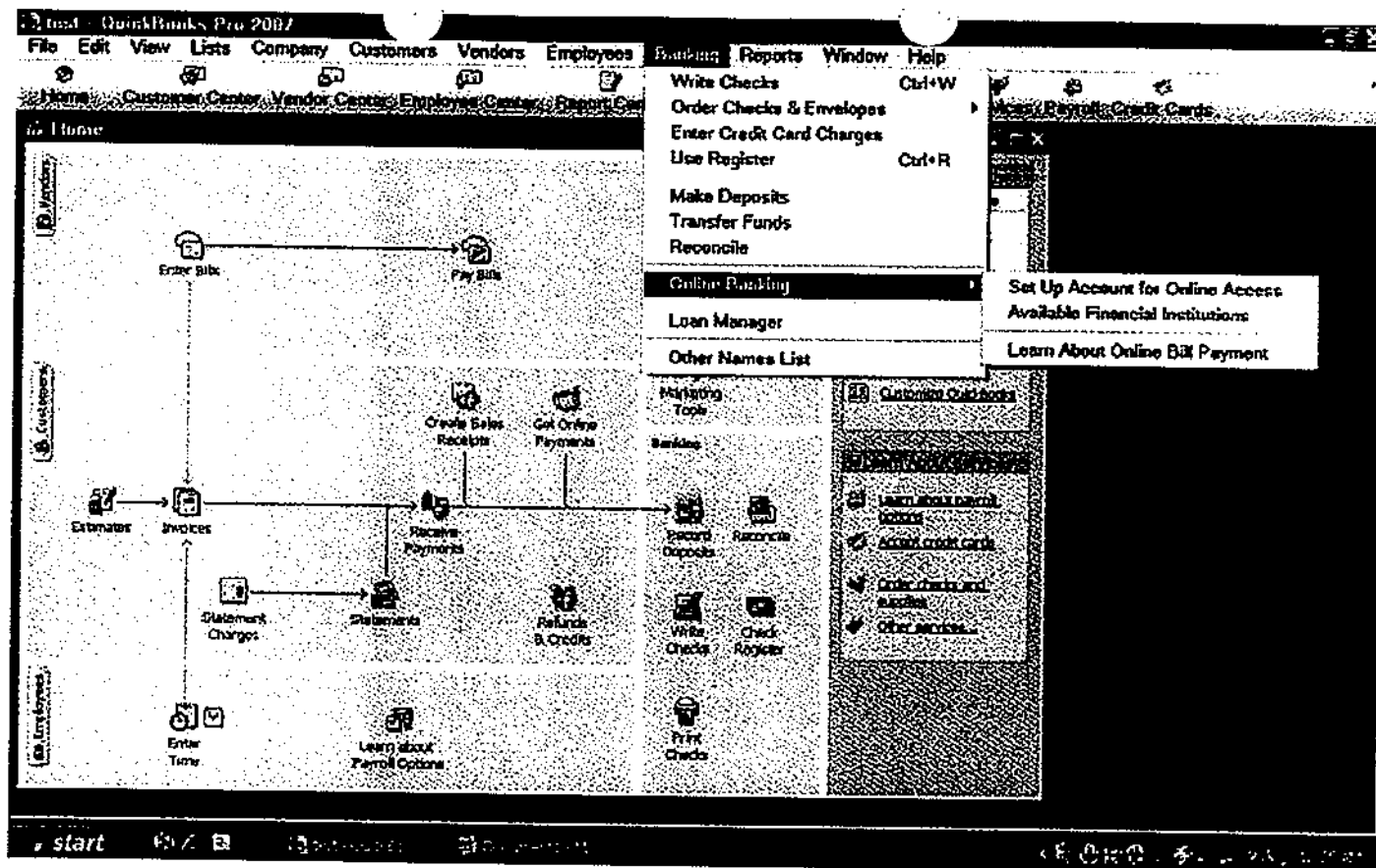
Regarding the deposition of Jennifer Osbelt and the continued deposition of Dave and Donna McDonald, we would like to set aside one week when we can complete all of these depositions on consecutive days. Please check your client's availability and let me know as Dave and Donna are basically local and have availability.

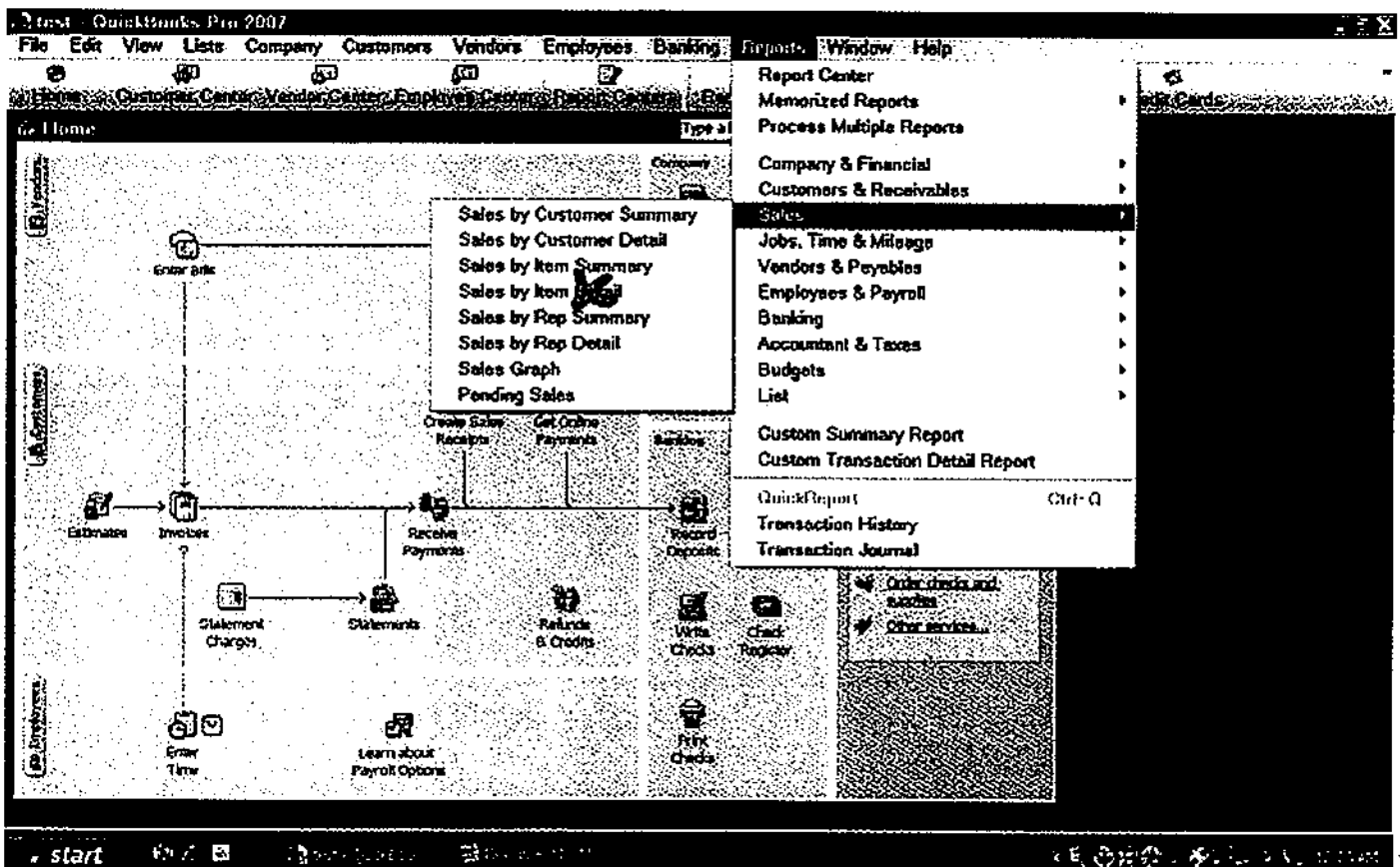
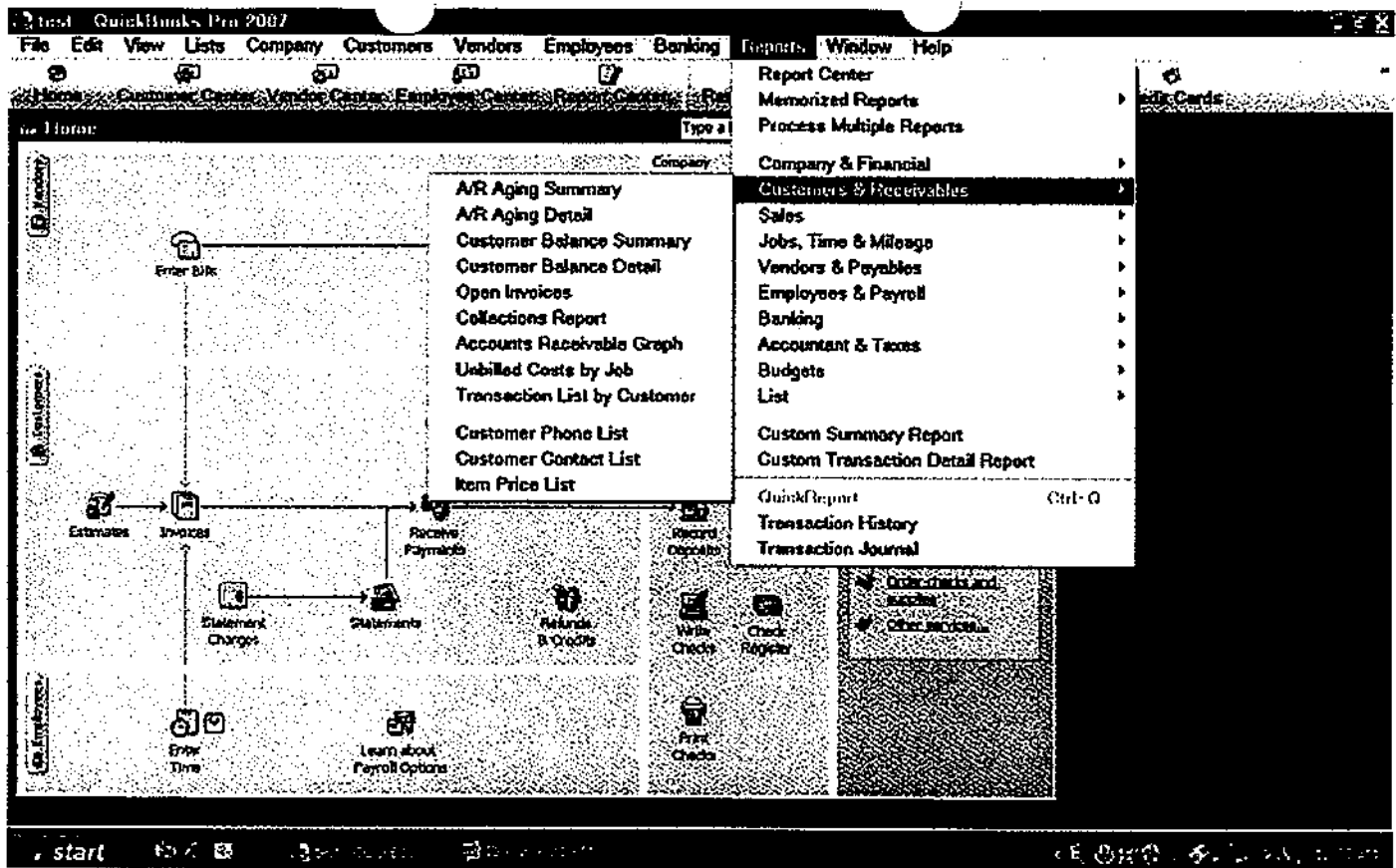
Very truly yours,

A handwritten signature in cursive script that reads "Cindy Hamilton". The signature is written in black ink and is positioned above the printed name.

Cindy Hamilton

Encl.





Osbelt v. McDonald, et al.

Case No. CIV 463528

PROOF OF SERVICE

I, Cathy Sandifer, declare that I am a citizen of the United States, over the age of eighteen years and not a party to the within action. I am an employee of GREENBERG TRAURIG, LLP, and my business address is 1900 University Avenue, Fifth Floor, East Palo Alto, CA 94303. On January 2, 2008, I served the following documents:

DECLARATION OF CINDY HAMILTON IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL AND SANCTIONS

☒ by transmitting via **FACSIMILE** the document(s) listed above to the fax numbers) set forth below, or as stated on the attached service list, on this date at approximately _____, from the sending facsimile machine telephone number of 650-289-7893. The transmission was reported as complete and without error by the machine. Pursuant to California Rules of Court, Rule 2008(e)(4), I caused the machine to print a transmission record of the transmission, a copy of which is attached to the original of this declaration. The transmission report was properly issued by the transmitting facsimile machine.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the **UNITED STATES MAIL** at East Palo Alto, California, addressed as set forth below.


☐ by **OVERNIGHT MAIL** by placing the document(s) listed above in a sealed overnight mail envelope with postage thereon fully prepaid, addressed as set forth below.

☐ **(BY MESSENGER PERSONAL SERVICE)**. I caused delivery of such envelope by hand via courier service to the offices of the addressee.

Sean Ponist, Esq.
Cotchett, Pitre & McCarthy
840 Malcolm Rd., Ste. 200
Burlingame, CA 94010
Fax No. (650) 697-0577

I am readily familiar with the business practice of my place of employment in respect to the collection and processing of correspondence, pleadings and notices for mailing with United States Postal Service/Express Mail, Federal Express and other overnight mail services. The foregoing sealed envelope was placed for collection and mailing this date consistent with the ordinary business practice of my place of employment, so that it will be picked up this date with postage thereon fully prepaid at East Palo Alto, California, in the ordinary course of such business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 2, 2008, at East Palo Alto, California.


Cathy Sandifer

E-FILED

SAN MATEO COUNTY

JANUARY 8, 2008

Clerk of the Superior Court

**By M. DRAGONRYDER
DEPUTY CLERK**

1 WILLIAM J. GOINES (SBN 61290)
2 KAREN ROSENTHAL (SBN 209419)
3 CINDY HAMILTON (SBN 217951)
4 GREENBERG TRAURIG, LLP
5 1900 University Avenue, Fifth Floor
6 East Palo Alto, California 94303
7 Telephone: (650) 328-8500
8 Facsimile: (650) 328-8508

9 Attorneys for Defendants
10 David D. McDonald and Donna K. McDonald

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO

JENNIFER OSBELT,

Plaintiff(s);

v.

DAVID D. McDONALD, DONNA K.
McDONALD, and DOES 1-10, inclusive,

Defendant(s).

Case No. CIV 463528

**ANSWER TO FIRST AMENDED
COMPLAINT**

(Date Action Filed: June 5, 2007)

AND RELATED CROSS-CLAIMS

Defendants David McDonald, Donna McDonald and National Expert Witness Network, (collectively, "Defendant") hereby answer the First Amended Complaint For Breach of Contract of Sale, Breach of Contract: Operating Agreement; Breach of Fiduciary Duty, Accounting, Slander Per Se and Violations of the Beverly-Killea Limited Liability Company Act, Corporate Waste; Abuse of Control; Conversion; Cancellation of Instrument/Restitution Based on Rescission; Unjust Enrichment; and Alter-Ego Liability ("Complaint") filed by Plaintiff Jennifer Osbelt ("Plaintiff") as follows:

GENERAL DENIAL

Pursuant to California Code of Civil Procedure section 431.30(d), Defendants generally deny each and every allegation of the Complaint, the whole thereof, including each and every alleged

1 cause of action contained therein, and further denies that Plaintiff is entitled to the relief requested or
 2 any relief at all, that Plaintiff sustained or will sustain damages in the sum or sums alleged, or any
 3 other sum or sums, or at all; Defendants further deny that Plaintiff is entitled to attorneys' fees in the
 4 sum or sums alleged, or any other sum or sums, or at all.

5 **FIRST AFFIRMATIVE DEFENSE**

6 **[Failure to State a Cause of Action]**

7 1. As and for a first, separate and affirmative defense to the Complaint, and to each and
 8 every cause of action contained therein, Defendants allege that Plaintiff's Complaint, and each of the
 9 purported causes of action contained therein, fails to state facts sufficient to constitute a cause or
 causes of action against Defendants.

10 **SECOND AFFIRMATIVE DEFENSE**

11 **[Statute of Limitations]**

12 2. As and for a further affirmative defense to the Complaint, and to each and every cause
 13 of action contained therein, Defendants allege that the Complaint is barred by the statute of
 14 limitations set forth in California Code of Civil Procedure sections 335 through 349.4, including, but
 15 not limited to sections 337, 337(a), 337.1, 337.15, 337.2, 338.1, 339c, 339.5, 340(3), and 343; and
 sections 2607(3)(a), 2725(1) and (2) of the California Commercial Code.

16 **THIRD AFFIRMATIVE DEFENSE**

17 **[Comparative Fault or Negligence of Plaintiff]**

18 3. As and for a further affirmative defense to the Complaint, and to each and every cause
 19 of action contained therein, Defendants allege that Plaintiff's injuries and damages, if any, are the
 20 direct and proximate result of Plaintiff's own fault or negligence and that, as a result, Plaintiff's claim
 is either barred or proportionately reduced.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 **[Comparative Fault or Negligence of Others]**

23 4. As and for a further affirmative defense to the Complaint, and to each and every cause
 24 of action contained therein, Defendants allege that the injuries sustained by Plaintiff, if any, were
 25 either wholly or in part negligently caused by persons, firms, corporations or entities other than
 26 Defendants and said fault or negligence is either imputed to Plaintiff by reason of the relationship of
 27 said persons, firms, corporations or entities other than this answering Defendants to Plaintiff and/or
 28 said fault or negligence comparatively reduces the percentage of negligence, if, any, by this
 answering Defendants.

FIFTH AFFIRMATIVE DEFENSE**[Assumption of the Risk]**

5. As and for a separate affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendants allege that Plaintiff acted with full knowledge of all the facts and circumstances surrounding Plaintiff's alleged injuries and thus assumed any and all risk of injury.

SIXTH AFFIRMATIVE DEFENSE**[Equitable Indemnity/Comparative Contribution]**

6. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendants allege that in the event Defendants is held liable, this Defendants is entitled to a percentage contribution of the total liability from persons, firms, corporations or entities other than this answering Defendants in accordance with the principles of equitable indemnity and comparative contribution.

SEVENTH AFFIRMATIVE DEFENSE**[Negligence/Liability of Other Persons/Entities]**

7. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendants allege that the charges alleged in the Complaint, if any, were caused by the negligence and liability of persons, firms, corporations or entities other than this answering Defendants.

EIGHTH AFFIRMATIVE DEFENSE**[Failure to Mitigate]**

8. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendants allege that Plaintiff failed to mitigate the alleged damages, if any, which she claims to have sustained and recovery should be barred or diminished accordingly.

NINTH AFFIRMATIVE DEFENSE**[Willful Misconduct]**

9. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendants allege that the alleged injuries or damages suffered by Plaintiff, if any, were the sole and proximate result of the willful misconduct of persons, firms, corporations or entities other than this answering Defendants.

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TENTH AFFIRMATIVE DEFENSE**[In Pari Delicto]**

10. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendants allege the affirmative defense of *in pari delicto*.

ELEVENTH AFFIRMATIVE DEFENSE**[Obligation Extinguished by Performance]**

11. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendants allege that the Complaint, and each and every cause of action contained therein, is barred by the provisions of California Civil Code section 1473.

TWELFTH AFFIRMATIVE DEFENSE**[Superseding Independent Intervening Proximate Cause]**

12. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendants allege that no act or omission on its part was a substantial factor in bringing about the alleged damages to Plaintiff, nor was any act or omission on the part of Defendants a contributing cause of the alleged damages suffered by Plaintiff and any alleged acts or omissions of Defendants were superseded by the alleged acts or omissions of other persons, firms, corporations or entities, including Plaintiff, which were the independent, intervening, and proximate cause of any injuries or damages sustained by Plaintiff.

THIRTEENTH AFFIRMATIVE DEFENSE**[Failure to Perform Conditions, Covenants and Promises]**

13. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendants allege that Plaintiff has failed to perform all conditions, covenants and promises required by her to be performed in accordance with the terms and conditions of the written contract.

FOURTEENTH AFFIRMATIVE DEFENSE**[Failure/Lack of Consideration]**

14. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendants allege that the Complaint is barred by a failure and/or lack of consideration, and no cause of action is stated.

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FIFTEENTH AFFIRMATIVE DEFENSE**[Mistake]**

15. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendants allege that the Complaint is barred and no cause of action is stated because of mutual and/or unilateral mistake of the parties in entering into the contract, if any, described in the Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE**[Prevention]**

16. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendants allege that it has fully performed the conditions and covenants required to be performed by it unless and until prevented from doing so by Plaintiff.

SEVENTEENTH AFFIRMATIVE DEFENSE**[Fraud/Intentional and/or Negligent Misrepresentation in the Execution of the Contract]**

17. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendants allege that the Complaint is barred in that the execution of the contract, if any, was procured by unlawful and illegal acts including fraud, intentional and/or negligent misrepresentation.

EIGHTEENTH AFFIRMATIVE DEFENSE**[Statute of Frauds]**

18. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendants allege that the Complaint is barred by the applicable statute of frauds, including, but not limited to, California Commercial Code section 2201 and California Civil Code section 1624, in that the alleged contract, if any, was not in writing and was for a price of more than \$500.00.

NINETEENTH AFFIRMATIVE DEFENSE**[Cancellation and/or Repudiation]**

19. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendants allege that the Complaint is barred in that the contract, if any, was timely cancelled and/or repudiated by this answering Defendants.

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TWENTIETH AFFIRMATIVE DEFENSE**[Non-Occurrence of Condition Precedent]**

20. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendants allege that Plaintiff is not entitled to performance by Defendants, because a condition precedent to Defendants's duty to perform has not yet occurred.

TWENTY-FIRST AFFIRMATIVE DEFENSE**[Conduct of Others]**

21. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendants allege that if Plaintiff sustained damages, which this answering Defendants expressly denies, then those damages were caused by persons other than this answering Defendants and for which this answering Defendants is not responsible.

TWENTY-SECOND AFFIRMATIVE DEFENSE**[Waiver]**

22. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendants allege that if Plaintiff sustained damages, which this answering Defendants expressly denies, then Plaintiff is barred by the doctrine of waiver from recovering those damages from this answering Defendants.

TWENTY-THIRD AFFIRMATIVE DEFENSE**[Estoppel]**

23. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendants allege that if Plaintiff sustained damages, which Defendants expressly denies, then Plaintiff is barred by the doctrine of estoppel from recovering those damages from Defendants.

TWENTY-FOURTH AFFIRMATIVE DEFENSE**[Unclean Hands]**

24. As and for a further affirmative defense to the Complaint and to each and every cause of action contained therein, Defendants allege that Plaintiff is barred from seeking equitable relief by the doctrine of unclean hands by virtue of Plaintiff's own conduct.

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TWENTY-FIFTH AFFIRMATIVE DEFENSE

[Failure To Join Necessary Parties]

25. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendants allege Plaintiff has failed to join all necessary parties as is required by California Code of Civil Procedure section 389.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

[Lack of Causation]

26. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendants allege that Plaintiff's damages, if any, were not actually or proximately caused by any acts, conduct, or omissions of Defendants.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

[Accord and Satisfaction]

27. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendants allege that the Complaint, and each and every cause of action contained therein, is barred by the principles of accord and satisfaction.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

[Payment]

28. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendants allege that the Complaint, and each and every cause of action contained therein, is barred because payment was made.

TWENTY-NINTH AFFIRMATIVE DEFENSE

[Rescission]

29. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendants allege that the Complaint is barred and fails to state a cause of action in that the contract, if any, upon which the Complaint was based has been rescinded.

THIRTIETH AFFIRMATIVE DEFENSE

[Commercial Frustration]

30. As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendants allege that any performance under the contract, if any was excused and the Complaint is barred by the doctrine of commercial frustration in that this answering Defendant was not required to perform the contract, if any, under the conditions that existed at the time for performance.

1
2 WHEREFORE, Defendants pray for judgment as follows:

- 3 1. That Plaintiff take nothing by reason of her Complaint;
4 2. For costs of suit incurred herein;
5 3. For reasonable attorneys' fees; and
6 4. For such other relief as the court deems just and proper.
7

8 Dated: January 8, 2008.

GREENBERG TRAURIG, LLP

9
10 By: Cindy Hamilton
11 William J. Goines
12 Karen Rosenthal
13 Cindy Hamilton

14 Attorneys for Defendants and Cross-Complainants
15 David D. McDonald and Donna K. McDonald
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Osbelt v. McDonald, et al.

Case No. CIV 463528

PROOF OF SERVICE

I, Cathy Sandifer, declare that I am a citizen of the United States, over the age of eighteen years and not a party to the within action. I am an employee of GREENBERG TRAURIG, LLP, and my business address is 1900 University Avenue, Fifth Floor, East Palo Alto, CA 94303. On January 8, 2008, I served the following documents:

ANSWER TO FIRST AMENDED COMPLAINT

☐ by transmitting via **FACSIMILE** the document(s) listed above to the fax numbers) set forth below, or as stated on the attached service list, on this date at approximately _____, from the sending facsimile machine telephone number of 650-289-7893. The transmission was reported as complete and without error by the machine. Pursuant to California Rules of Court, Rule 2008(e)(4), I caused the machine to print a transmission record of the transmission, a copy of which is attached to the original of this declaration. The transmission report was properly issued by the transmitting facsimile machine.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the **UNITED STATES MAIL** at East Palo Alto, California, addressed as set forth below.

☐ by **OVERNIGHT MAIL** by placing the document(s) listed above in a sealed overnight mail envelope with postage thereon fully prepaid, addressed as set forth below.

☐ **(BY MESSENGER PERSONAL SERVICE)**. I caused delivery of such envelope by hand via courier service to the offices of the addressee.

Sean Ponist, Esq.
Cotchett, Pitre & McCarthy
840 Malcolm Rd., Ste. 200
Burlingame, CA 94010
Fax No. (650) 697-0577

I am readily familiar with the business practice of my place of employment in respect to the collection and processing of correspondence, pleadings and notices for mailing with United States Postal Service/Express Mail, Federal Express and other overnight mail services. The foregoing sealed envelope was placed for collection and mailing this date consistent with the ordinary business practice of my place of employment, so that it will be picked up this date with postage thereon fully prepaid at East Palo Alto, California, in the ordinary course of such business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 8, 2008, at East Palo Alto, California.


Cathy Sandifer